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THE CRIMINAL LAW REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Purpose and scope

The purpose of publishing *The Criminal Law Review* is to put into the hands of all those interested in the practice and administration of the criminal law a monthly periodical which will cover every aspect of the subject in detail.

Criminal law as presented to the lawyer is apt to be dull and somewhat repetitive. Crime as presented to the public by the daily and weekly press is sensational and often borders on the incredible. Somewhere between those extremes it should be possible to state the latest developments in criminal law in terms which are readable, informative and reliable, and this is the objective of *The Criminal Law Review.*

The scope of the *Review* is not wholly confined to criminal law: it includes practice and procedure, both in the courts and outside them, and it embraces criminology and penology in so far as those sciences are of direct interest to those whose duty is to administer the law.

The readership at which *The Criminal Law Review* is aimed includes both branches of the legal profession, the judges and officers of the various courts of criminal jurisdiction, and all those, including police officers, who are concerned with the administration of criminal justice. It is hoped that there will be something of special interest for each as well as much of importance to all.

Contents and format

The contents of *The Criminal Law Review* will include articles of the most varied character, written by those who have a special knowledge of their subject; under the head of "Case and Comment" a note of all the recent cases, with annotations dealing with matters on which elucidation is desirable; brief notes of all the new offences which have been created, continued or modified by statute and by departmental orders; points of practice and procedure which have arisen or which might arise in the courts or in the preparation of cases for trial; general information which requires to be recorded. From time to time there will be included an overseas letter giving the latest developments in the other common law jurisdictions.

The small format has been chosen for its convenience in carrying around and slipping into the pocket for reading at odd intervals in a life of pressure. It has served those purposes well in other recent publications by the same publishers.

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The intention is that *The Criminal Law Review* shall be complete in the sense that there shall be at least a reference to every development falling within its scope. Not all the matter herein is original, but some of the cases and practice points reported herein are not available in any other form. In particular it is intended to make a collection of sentences which may, in time, become a useful guide to practice.

Since there is small use in being complete unless the information is readily available, the index to *The Criminal Law Review* will be cumulative month by month and, so far as can be foreseen, year by year. This is not as easy to achieve as it may sound, but even short of perfection the effort is worth while.

Cooperation

The Editors invite the cooperation of all their subscribers in the supply of information, in suggestions for improvement, in ideas as regards scope and treatment, in criticism, however savage, and in pointing out the mistakes which in their melancholy persistence are bound to creep into the work. All these not only feed the editorial fire but are of ultimate value to the profession.

Defence Regulations

The Defence Regulations which were produced with such remarkable profusion and foresight in the first few days of September, 1939, have in their attenuated but still substantial form been continued until the end of 1954. The twentieth edition prepared in the Office of the Parliamentary Counsel showing the state of affairs at December 15, 1952, has suffered a great deal of change, and it is to be hoped that a twenty-first edition will be published promptly. Much of the control over business has been released, although the powers remain in force. Some of the regulations have been replaced in more permanent form; thus, reg. 2BA of the Defence (General) Regulations, 1939, under which gunpowder or safety fuse may not be purchased or kept without a licence from the chief officer of police has been revoked; but similar restrictions are imposed by the Control of Explosives Order, 1953.

Many of the extraordinary penalties have been dispensed with: thus, breaches of reg. 56A (control of building operations), which were formerly punishable with a maximum of a fine of £5,000, or three times the cost of the work, whichever was the greater, and/or imprisonment for seven years, is now punishable like any other breach of the regulations for which no special penalty is provided.

Trial of a deaf mute

The Attorney-General was asked in the House of Commons why at the trial of a deaf mute at Cardiff Assizes the evidence of two officers from Scotland Yard, concerning an alleged statement of the accused, was not called. It was stated that the defendant had been committed on the evidence of the statement alone. The answer was, that the trial never reached the stage where the evidence of the two officers would be called. The case was further discussed when questions were later directed to the Home Secretary. On this occasion the qualification of interpreters for deaf persons and the fact that the defendant remained in the police station for three days were also considered. The Home Secretary emphasised that there is no such thing as " detaining for questioning " in this country.[1]

This case, *R.* v. *Roberts*, raises interesting points on the trial of whether an accused is fit to plead and is considered in an article on p. 20.

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[1] H.C. Debates, Vol. 520, col. *116*, November 16, 1953; Vol. 521, col. 1315 *et seq.*, December 3, 1953.

Evidence by mechanical aid

A suggestion recently made to the Home Secretary was that in all cases of investigations by the police into murder charges, there should be kept a complete recorded account of all evidence and talks between the police and the accused on electrical recording machines. The suggestion was not accepted.[2] It is, however, interesting to note that in a recent case in a magistrates' court a conversation between an accused and the woman he is alleged to have indecently assaulted was recorded on a tape recorder. The magistrate considered that the evidence of the recording machine was admissible and it was played in court. The accused was committed for trial at Essex Assizes where he pleaded guilty so that it was not necessary to test the admissibility of the evidence recorded on the machine.

It is understood that evidence by mechanical aid may be admitted in some courts in America.

The technical aspects of the subject will be considered in an early article in the *Review*.

Punishments

The Home Secretary was not to be drawn into making premature statements about the Government's intentions concerning the Gowers Committee Report on Capital Punishment. He was not willing to take steps to suspend the death sentence; this would be anticipating a decision which could properly be taken only by Parliament.

A suggestion that all forms of corporal punishment on children of tender age by anyone should be prohibited was met by a flat "No!"[3]

Homosexual crime

Prominence has recently been given to the number of homosexual crimes and the Home Secretary is being asked by many bodies to set up a Royal Commission to inquire into these crimes and kindred matters, but, whilst considering the law relating to sexual offences and the treatment of offenders, he is not prepared to make any statement.

He considers it important to view this matter in a proper perspective, and not to draw exaggerated pictures of the extent of the evil to be found in our streets. He is obtaining information from various quarters, including information about the law and practice in other countries, which might help him in considering whether any amendment of the law or any changes in its enforcement would help in dealing with the problem. As part of these inquries officials have been visiting the United States and the Home Secretary has discussed the problem with the metropolitan magistrates with a view to getting first-hand knowledge of their impressions and experience.

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[2] H.C. Debates, Vol. 520, col. *76*, November 12, 1953.
[3] H.C. Debates, Vol. 520, cols. *71*, *73*, November 12, 1953.

Later in reply to further questions he gave the figures showing the number of cases involving male perversion in 1938 and 1952; there were about five times as many in each category in 1952 compared with 1938. He had not been informed that certain police forces considered that they lacked sufficient power to deal with these offences nor had he any reason to believe that the maximum penalties were inadequate.

Referring to the treatment of offenders the Home Secretary said that he would give no countenance to the view that offenders should not be prevented from being a danger to the public, especially the young; the prisons are alive to the need for medical treatment but the cooperation of the offender is necessary and is not always given. He thought that the chances of increasing homosexual inclination in prisons had been much exaggerated.[4]

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[4] H.C. Debates, Vol. 520, col. *74*, November 12, 1953; Vol. 521, col. 1302 *et seq.*, December 3, 1953.

Requisites of a Valid Arrest

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The law of arrest has a double importance in criminal law. It is a mode of bringing criminals to justice, and so a step in procedure. And it is a justification for interference with the body of another, which is linked in some respects with the justification of private defence, and with the general powers of the police for preserving order.

There is perhaps no part of the law in a more confused and difficult state than this, and none that it is more important should be clear and comprehensible. As the Royal Commission on Police Powers and Procedure pointed out in 1929, a constable has generally to act alone, and he often has to make an arrest alone and take the prisoner by his own unaided action to the police station. " However difficult and novel may be the circumstances which confront him in the course of his ordinary duties, he has, unless the matter brooks delay, to decide instantly, and on his own responsibility, whether they call or not for his interference. It follows that a great deal of the most difficult work of the force is left to the initiative and capacity of the humblest unit in each Division." In this article, and others on the general problem which will be contributed from time to time, emphasis will be placed on practical problems of law enforcement.

The importance of deciding whether an arrest is legal or illegal

Neither a police constable nor anyone else has a general power of arrest for crime. A person making an arrest must either act under warrant, or bring himself within the four corners of one of the detailed rules authorising arrest without warrant. Assuming the legal power to make an arrest, there are certain general requirements of a proper and effective arrest. (1) The person arrested must be deprived of his liberty; in technical language this is called an imprisonment. (2) The imprisonment must be intended as a step in a criminal process, and this intention must be made known by the officer to the person arrested. (It is convenient to use the name "officer" for the person making the arrest, though he may be a private person). (3) Subject to some exceptions, the reason for the arrest must be communicated to the person arrested.

Effect of lawful arrest

Before commenting on these three rules, a few words may be said on the way in which they come before courts of justice. When an arrest complies with the rules, it puts the person arrested into the custody of the law, so that if he escapes he will be guilty of a misdemeanour. If the officer, after making the arrest, allows his captive to escape, he will himself be guilty of an offence, though the limits of this are not precisely defined. The use of force to resist lawful arrest is an ordinary offence of assault, whether common or aggravated, and also constitutes a statutory assault under the Offences against the Person Act, 1861, s. 38, and the Prevention of Crimes Act, 1871, s. 12. The former statute protects not only constables but those who assist them, and it even protects private persons lawfully making an arrest on their own account. To kill the person making an arrest as a result of violence against him, even though the death be unintended, is murder.

Effect of unlawful arrest

If the arrest is not lawful, a different set of legal consequences follows. An unlawful arrest is technically a "false "imprisonment," which is both a tort, giving an action for damages against the officer, and a common-law misdemeanour. The damages awarded may be punitive, that is to say more than are necessary to compensate the plaintiff, in recognition of the fact that his constitutional right to freedom has been invaded (*Huckle* v. *Money* (1763) 2 Wils.K.B. 205; *Dumbell* v. *Roberts* [1944] 1 All E.R. 326, C.A.). If need be, the victim is entitled to a writ of habeas corpus. A police officer acting reasonably has little to fear from these charges: for even if damages are awarded against him, they will, according to the usual practice, be paid from local funds, or, in the case of the Metropolitan Police, from the Metropolitan Police Fund. The way in which the question of legality of an arrest is more likely to arise in court is by the police prosecuting the suspect for escaping, or for some kind of assault accomplished in the course of trying to escape. If there is no legal arrest, the charge of escape will fail and so will a charge of assaulting the constable in the execution of his duty, for an officer making an illegal arrest is not acting in execution of his duty (*Punshon* v. *Leslie* (1879) 43 J.P. 605; *Cumpton* (1880) 5 Q.B.D. 341; *cf. Mabel* (1840) 9 C. & P. 474; *Broughton* v. *Wilkerson* (1880) 44 J.P. 781; *Davis* v. *Lisle* [1936] 2 K.B. 434). In the same way, there can be no charge of shooting, etc., with intent to resist lawful apprehension under section 18 of the Offences against the Person Act, 1861, if the arrest was illegal (*Sanders* (1867) L.R. 1 C.C.R. 75; *Marsden* (1868) L.R. 1 C.C.R. 131; *cf. Curvan* (1826) 1 Mood.C.C. 132; *Walker* (1854) Dears.C.C. 358).

The doctrine of "rebellion"

An act done in necessary and reasonable self-defence against unlawful arrest is not even a common assault (*Long* (1836) 7 C. & P. 314). According to the traditional view of English law, this is so although the self-defence is against a constable. English law does not know the French doctrine of *rebellion*, under which resistance even to unlawful action on the part of the police is an offence. The English attitude was expressed vividly by Sir James Fitzjames Stephen when he said that "with some few exceptions [a policeman is] a private person paid to perform as a matter of duty acts which, if so minded, he might have done voluntarily" (quoted in [1947] A.C. at 602). When he travels outside his duty, resistance to him is as lawful as to any other wrongdoer. Hence, in all the cases just cited on assault on an officer in the execution of his duty or to resist arrest, the issue was whether the officer's conduct was lawful; once it was determined that the conduct was not lawful, the charge failed. There was no suggestion that the accused, in resisting arrest, was guilty of a common assault.

Although this is a strong inferential argument as to the common law, it is not one based on direct authority. A judge once said that "the clearer a thing is, the more difficult it is to find any express authority or any dictum exactly to the point." So it is here: there seems to be no English authority squarely deciding against a doctrine of *rebellion* as applied to illegal conduct by the police. The nearest is *Osmer* (1804) 5 East 304, where it was ruled that if a sergeant at mace who has no authority to execute a warrant tries to execute it, he may be resisted. On the other hand, a few cases may be thought to give a doctrine of non-resistance to officers some faint or partial support. One of these is *Mackalley's* case (1611) 9 Co.Rep. at 66a, where it was held that an arrest may be made in the night: "for although he cannot see the officer, yet when he hears him say, 'I arrest you in the King's name, etc.' he ought to obey him, and if the officer has not a lawful warrant, he shall have his action of false imprisonment." This dictum is directed only to the question of arrest at night, when the warrant cannot be seen. Even as so limited, it does not necessarily imply a doctrine of *rebellion*. It is a counsel of prudence to one arrested at night that he ought to obey, and to content himself with an action if the arrest prove to be illegal. But the judges did not say that if he chooses to gamble on the arrest being illegal, and resists, and it transpires that the arrest is actually illegal, he is guilty of assaulting the officer.

There is another dictum in the same case (at p. 68a) which, though apparently relevant, will be found on close examination to relate only to the protection given to an officer by a defective warrant.

The importance of *Mackalley's* case at the present day is the use made of it by Lord du Parcq in *Christie* v. *Leachinsky* [1947] A.C. at 599, 601. The noble lord seemed prepared, on the authority of the case, to give some qualified support to a doctrine of *rebellion*, but the other lords did not concur in this. It is true that they expressed general agreement with his speech, but Lord Simonds, at least, made it plain (at p. 591) that in his view the right to resist illegality by the police was the same as the right to resist illegality by anyone else.

There appears to be only one other decision forbidding the use of self-defence against illegal conduct by the police. This is *Ernest Jones* (1848) 6 St.Tr.(N.S.) 783 at 811, one of the cases arising out of the Chartist riots. Wilde C.J. directed the jury that it was not lawful for a public assembly to stand their ground shoulder to shoulder when the police came there to disperse them. "If the police had interfered with them, they were not at liberty to resist in any such circumstances; they ought to have dispersed by law, and have sought their remedy against any unjust interference afterwards." In the absence of any confirmatory ruling or appellate pronouncement this must be regarded as a somewhat weak authority.

Results of non-acceptance of doctrine

In his book *Freedom under the Law*, Lord Justice Denning rejoices that English law does not know the doctrine of *rebellion*, which he seems to regard as an encouragement to illegality on the part of the police. One may, with every respect, question this danger. It would not be realistic to say that at the present day the citizen is accustomed to exercise his right to resist illegal arrest. He would be ill advised to do so, for police powers are at once so wide and so intricate that one not specially versed in this part of the law could not make a safe judgment on the legality of the arrest. In actual fact, the only persons who resist illegal arrest are those violent criminals who resist all arrest.

If the present permission to use force against the police when they make illegal arrests were generally acted on, it might create grave danger for individual policemen. The fact is that an officer who arrests may be acting as he thinks proper in the circumstances, without being quite sure whether the arrest is legal. When the law of arrest is as complex as it is, no encouragement should be given to a pitched battle between citizens and the constabulary over the issue of legality. Under the present law, although it is the function of the police to use force within limits, they are subject to counter force for the slightest and most innocent infringement of the limit. In the United States, where it is common for criminals to carry arms and to use them to resist arrest, the rule permitting resistance to illegal arrest has occasioned dissatisfaction, and it would seem that in this respect the French doctrine has much to commend it.

Even where force may lawfully be used to resist illegal arrest, no more force must be used than is necessary; and in any event the force must not amount to the intentional infliction of death or great bodily harm. Otherwise the person using the force will be guilty of the same crimes as he would if there were no question of arrest. In this respect a remark of Lord du Parcq in *Christie* v. *Leachinsky* [1947] A.C. at 601, is misleading. The noble lord quoted *Curvan*, above, as a case that " strikingly demonstrates to what lengths a man may go in the defence of his liberty." Curvan had slashed his would-be illegal arrester with a knife; but the decision was merely that he was not guilty of cutting to resist lawful arrest, because the arrest was not lawful. There can hardly be any doubt that the force used by Curvan was illegal, and that he could have been convicted of common assault or of some aggravated assault not involving a reference to lawful arrest.

Killing to avoid unlawful arrest

There is old authority for saying that if a man kills in order to avoid illegal arrest, his guilt amounts to manslaughter only, not murder, for the illegal arrest constitutes sufficient provocation to reduce the charge; but the extent to which this would still be followed is doubtful (*Russell*, 10th ed., p. 488). The mere fact that the illegal arrester dies as a result of violence inflicted in defending against an arrest does not make the person arrested guilty of constructive murder (*Phelps* (1841) 1 Car. & M. 180). He will, however, be guilty in respect of his act of violence as if no death had occurred. If the unlawful arrester shows an intention of himself killing or inflicting serious harm, the victim may in self-defence reply in kind.

The danger sometimes incurred in making arrests is recognised by the law, for the Criminal Law Act, 1826, s. 28, empowers courts to order compensation to those who have been active in the apprehension of certain offenders, or (section 30) to the family of one killed in attempting to take certain offenders. *Cf.* Criminal Justice Administration Act, 1851, ss. 6–8; Jurisdiction in Homicides Act, 1862, s. 11.

The fact that an arrest was unlawful is no defence on a prosecution of the person arrested (*Hughes* (1879) 4 Q.B.D. 614).

The person arrested must be deprived of his liberty

Confinement or physical force unnecessary

An imprisonment, or deprivation of liberty, is a necessary element in an arrest; but this does not mean that there need be an actual confinement or physical force. If the officer indicates an intention to make an arrest, as, for example, by touching the suspect on the shoulder, or by showing him a warrant of arrest, or in any other way by making him understand that an arrest is intended, and if the suspect then submits to the direction of the officer, there is an arrest. The consequence is that an arrest may be made by mere words, provided that the other submits. As Tindal C.J. said: "The authority of Buller's *Nisi Prius* seems to me to go the full length of this. It is there laid down that 'if the bailiff who has a process against one, says to him, when he is on horseback or in a coach, *You are my prisoner, I have a writ against you*; upon which he submits, turns back, or goes with him, though the bailiff never touched him, yet it is an arrest, because he submitted to the process' " (*Grainger* v. *Hill* (1838) 5 Scott 561 at 575).

The same rule is shown by a case where the plaintiff, suing for false imprisonment, showed that he was not allowed to go upstairs in his own house except in the company of an officer; the court held that it was an arrest because it was meant to be conveyed to the mind of the plaintiff that he should not go out of the presence or control of the officers (*Warner* v. *Riddiford* (1858) 4 C.B.(N.S.) 180). These decisions render doubtful some older cases, such as *Berry* v. *Adamson* (1827) 6 B. & C. 528.

Grainger v. *Hill* seems further to decide that if the officer announces that he will arrest the other unless he gives up a certain thing, and the other complies, this is a sufficient constraint upon the person to amount to an imprisonment. The reason for the rule is obvious: an officer who makes such a threat is impliedly saying that the other must not go out of his presence until he complies with the condition. The threat therefore becomes an imprisonment as soon as it is complied with. By a slight extension of this reasoning, it might be held that there is an imprisonment if the officer makes it clear that he will not let the suspect go until he answers a question, for instance, gives his name and address, and if the suspect complies under this duress.

Non-acquiescence in arrest

The rule in *Warner* v. *Riddiford* assumes that the suspect acquiesces in the arrest. If he does not acquiesce, but persuades the officer to leave him alone, or successfully takes to flight, there is no arrest. This appears from *Russen* v. *Lucas* (1824) 1 C. & P. 153, and is also strongly supported by American decisions like *Lawrence* v. *Buxton* (1889) 102 N.C. 129; 8 S.E. 774. According to *Russen* v. *Lucas* the acquiescence must be a real one: so that if the suspect says: "Wait for me outside the door, and I will come to you," whereas his intention is to escape and he does so, there will be no arrest. It must be noticed, however, that the point arose in an action against the sheriff for permitting the escape, and it might well be determined differently if the allegation that there was no completed arrest was made by the suspect himself, as in proceedings against the suspect for the offence of escape. As against the suspect, it may well be that his words of submission would be taken as sufficient. Any other rule would occasion great difficulty, for who is to say whether the show of submission is real or feigned? If a feigned submission is no submission, it follows that the only safe course for the officer is to lay hands upon the accused; but the policy of the judges in deciding the cases has been to dispense with this requirement, in the interest of the public peace. There is obviously a greater risk of annoying the suspect into committing a breach of the peace if hands are laid upon him than if he is approached politely and asked to come quietly. It may be surmised, therefore, that the decision in *Russen* v. *Lucas* is of limited application, and that it does not lie in the mouth of the suspect himself to allege that his show of submission was only a strategem.

If the person to be arrested plainly does not acquiesce, what must the officer do in order to establish a valid arrest in point of law, thus making the arrestee guilty of the offence of escape if he should break away? The answer is that it is necessary and sufficient for the officer to touch the person to be arrested, at the same time making it plain to him that he is arrested, and where possible stating the act for which the arrest is made. If the suspect is not touched, even though he is surrounded in his house by a cordon of police, he is not arrested: the surrounding is an imprisonment, for which an action for false imprisonment would lie if it were not authorised by law, but it does not amount to an effective arrest which would make a subsequent escape a crime. On the other hand, if the suspect is touched, there is an arrest, even though he is not grasped and even though he is stronger than his arrester and easily succeeds in making off. This rule was established by the Court of Exchequer Chamber in *Sandon* v. *Jervis* (1859) E.B. & E. 942, following earlier authority. The facts were that the officer touched the person to be arrested through a window; and it was held that this was sufficient. Pollock C.B. said: "There may be an apparent incongruity when the contact takes place under circumstances which preclude the possibility of an actual seizure, like the case of a wall intervening, as between Pyramus and Thisbe, but with the possibility, not merely of a whisper, but of a touch. Where, however, the debtor [the person arrested] is actually in a house which is watched, so that he cannot get away, there is no absurdity in saying that a touch shall constitute an arrest." It will be observed that the learned Chief Baron's doubt in this passage arose only because the touching was through a window; had the touching been between two persons in the same room, it would clearly have been an arrest on the authorities, even though the house were not surrounded or watched. That is to say, it would be an arrest as against the person arrested. Bramwell B. introduced a necessary qualification in the same case when he said that the apprehension, though good against the person arrested, was perhaps not a valid arrest for the purpose of charging the sheriff with an escape if the debtor subsequently fled. A proceeding against an officer for allowing an escape presupposes that the person in question has been brought effectively into control, and there may be no arrest for this purpose although there is a valid arrest as against the arrestee himself.

The upshot of this discussion is that, for the purpose of putting the suspect into the position of an arrested person, he need not be touched if he submits, or appears to submit, but if he does not make submission he must be formally touched.

Distinction between command and request

The foregoing remarks do not mean that every request by a police constable to a suspect to accompany him, followed by acquiescence, amounts to an arrest. One has to face the very difficult distinction between a command and a request. If the officer merely makes a request to the suspect, giving him to understand that he is at liberty to come or refuse, there is no imprisonment and no arrest. If, however, the impression is conveyed that there is no such option and that the suspect is compelled to come, it is an arrest. The distinction does not turn merely on the words used but on the way in which they are spoken and on all the circumstances. All manner of ambiguous expressions may be used by the officer, as if he says: "I must ask you to come with me"; or "I think it would be better if you came with me"; or, weaker, "I suggest that we both go to the police station where you can tell your story to the superintendent." The question "Will you come with me?" may look in print like a request; but it is capable of being intoned as an imperative instead of as a question, and will then be a command. A court would probably incline to hold that all expressions of this sort, coming from a person known to be a police officer, are commands and not requests, unless they clearly leave the suspect with a choice. The proper practice is for the officer to tell the suspect expressly that he is not bound to come, where a choice is intended to be left to him.

The interpretation of words as amounting to command or request is somewhat affected by the proceedings in which it has to be determined. If the suspect is being charged with escape, the question is: did he realise that he was under arrest? If the suspect is suing for the tort of false imprisonment, the question is: did the officer intentionally or negligently cause the suspect to believe that he was under arrest? If the officer is being prosecuted for the crime of false imprisonment, the question is: did he intentionally or recklessly cause the suspect to believe that he was under arrest? The distinction between the tort and the crime arises from the fact that on a charge of crime, *mens rea* must be shown. In each case the question is what was conveyed to the mind of the suspect, except that in a legal proceeding against the officer fault or *mens rea* has to be considered.

The intention with which the arrest is made

Obviously it is not every imprisonment or detention that constitutes an arrest. To be an arrest, there must be an intention to subject the person arrested to the criminal process —to bring him within the machinery of the criminal law; and this intention must be known to the person arrested. Arrest is a step in law-enforcement, so that the arrester must intend to bring the accused into what is sometimes called "the custody of the law." But this is a somewhat metaphysical expression and we need to try to define more precisely what is the intention that is required.

If one thinks about the matter there can hardly be any doubt that it must be an intention in some sense to take the first step in charging the suspect with a crime. (There may, of course, be an arrest on civil process which this definition would not fit: we are considering exclusively arrest as a step in a criminal proceeding.) The intention certainly need not be an absolute one: the officer may have the full intention of releasing the suspect if a satisfactory explanation should transpire. But it is not sufficient, on this view, that he intends to charge the suspect only in the event of extracting incriminating admissions from him. There is a clear difference between these two situations: between an intention to charge unless the suspect clears himself, and no intention to charge unless he gives himself away.

Notification of the cause of arrest

The rule in Christie v. *Leachinsky*

On an arrest under warrant, the warrant must in normal cases be read to the person arrested. Even where the arrest is not under warrant, the person arrested has a right to be informed not only that he is being arrested but also of the reason for the arrest. This was decided by the House of Lords in *Christie* v. *Leachinsky* [1947] A.C. 573. The charge need not contain the same accurate description of the offence as an indictment (*per* Lord du Parcq at p. 604). Indeed, the precise charge need not be formulated, provided that the accused is told the *act* for which he is arrested. Thus it is enough to tell him that he is arrested for killing P, without determining whether he is to be prosecuted for murder or manslaughter (*per* Lord Simonds at p. 593). The illustration seems to show that the state of mind charged against the accused need not be expressed. There must be circumstances, however, where some indication has to be given. Thus, on the usual type of arrest under the Vagrancy Act, the accused would presumably have to be told that he is arrested as a suspected person loitering with intent to commit a felony. Perhaps the officer would not have to specify the felony, and indeed he might be unable to do so; yet it must be admitted that such a charge would be an uninformative kind of information. This is not the only instance where the powers of the Vagrancy Act can be used in such a way as to defeat limitations elsewhere placed upon the power of arrest.

Reasons for the rule

One reason advanced for the rule in *Christie* v. *Leachinsky* is that a person improperly arrested has a right to defend his freedom by force; consequently, unless the person arrested is informed of the reason for the arrest, he cannot form an opinion whether to submit (*per* Lord du Parcq at p. 598). In the words of Lord Simonds, " blind unquestioning obedience is the law of slaves: it does not yet flourish on English soil." The reason is somewhat legalistic, because, as said before, few people know the law of arrest in such a way that they can decide on the spot whether the arrest to which they are being subjected is legal. Gamekeepers may know their power to arrest poachers; customs officers may know their powers under the Customs and Excise Act; railway police may know their powers under railway legislation; the police of particular towns and counties may know their powers under the general or local law; but the citizen, who is at the receiving end of all these powers of arrest, cannot know them. Besides, where an officer has power to arrest another on reasonable suspicion of crime, the other has to know much else besides the crime or act with which he is charged in order to determine the validity of the arrest: he must know the grounds of the officer's suspicion. No one has yet suggested that the officer when arresting must state what are the grounds of his suspicion, and any such rule would be unworkable. The true reason for the rule in *Christie* v. *Leachinsky* is a different one: it is the desirability of giving the accused notice as soon as possible of the charge against him, in order that he may clear himself if he can (*per* Viscount Simon L.C. at p. 588). Incidentally, the rule has the effect of preventing the police from arresting on vague general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of some crime for which they have power to arrest. Even if such evidence comes to light, the arrest will be illegal because there will have been no proper communication to the accused at the time.

Arrest on a holding charge

If a crime is specified for which the officer has power to arrest on reasonable suspicion, the mere fact that the person arrested is subsequently charged with a different crime does not make the arrest wrongful, for *non constat* that the officer did not reasonably believe that the stated crime had been committed when he made the arrest (Lord Simonds at pp. 592–3). So it seems that an otherwise valid arrest on a minor charge is not rendered illegal by the fact that the real or principal motive of the police is to prevent the suspect's escaping from justice on some major charge which they are preparing against him (*per* Lord du Parcq at pp. 604–5). This means that there is no legal objection to the practice of making a "holding charge," provided of course that the holding charge is a genuine one and that it operates to justify the detention. If a person is lawfully arrested by the police, who later determine not to proceed upon the charge for which he was arrested, they must immediately release him, unless they then have good grounds for continuing his detention on another charge (*per* Scott L.J. in the court below [1946] K.B. at 135). Presumably they must inform him of the change of charge.

Declaration of official status

Where the authority to arrest is given only to a policeman, it would follow as corollary from *Christie* v. *Leachinsky* that the officer arresting must give notice of his official status (*cf.* Hale, *P.C.* ii 90; [1947] A.C. at 586); but doubtless his wearing of uniform would be sufficient. A plain clothes officer should produce his warrant card.

Exceptions to the rule in Christie v. Leachinsky

The rule in *Christie* v. *Leachinsky* is subject to an exception if the circumstances are such that the accused must know why he is being arrested. It would be absurd to say that a householder who locks a burglar in a room is required to call the nature of the offence through the keyhole. As Lord Simonds expressed it, "there is no need to explain the reason of arrest if the arrested man is caught red-handed and the crime is patent to high heaven." *Cf. per* Viscount Simon L.C. at p. 587, and *Willey* v. *Peace* [1951] 1 K.B. 94. Hence it was held in an old case that if a gamekeeper runs after a poacher to take him, and the poacher shoots to resist arrest, the poacher is guilty of resisting a lawful arrest, although no words have been spoken (*Payne* (1833) 1 Mood.C.C. 378).

Again, explanation is not a necessary prelude to arrest where it is made to secure a possibly violent criminal (*per* Lord Simonds at p. 593), or where the person arrested is deaf (*Tims* v. *John Lewis & Co., Ltd.* [1951] 2 K.B. 459, C.A., reversed on another point by the House of Lords [1952] A.C. 676). It also seems probable that an arrest is not a false imprisonment, although the person arrested had no actual notice of the reason for the arrest, if the arrester had reasonable ground to believe that he knew it.

Where reason for arrest is not at once stated

There appears to have been a certain difference of opinion in *Christie* v. *Leachinsky* as to the liberty to resist arrest where the arrester is a policeman who does not state the reason for the arrest. Where the suspect makes resistance before the officer arresting can "speak all his words," the resistance is clearly illegal (*per* Viscount Simon at p. 587). But what if the policeman has time and opportunity to state the reason for the arrest, but neglects or refuses to do so? It seems that all the law lords except Lord du Parcq would have conceded the liberty to resist in these circumstances. Lord du Parcq, however, quoted *Mackalley's* case (above, p. 9) as authority for the proposition that the right to resist unlawful arrest "is always limited by the duty to submit to arrest by an officer of the law even though the reason for the arrest is not at once stated" ([1947] A.C. at 601; *cf.* p. 599). The limiting effect of the words "at once" is not clear, and *Mackalley's* case hardly supports the proposition. Perhaps a stronger authority is *Bentley* (1850) 4 Cox C.C. 406; 14 J.P. 671, where Talfourd J. ruled that resistance to arrest by a constable was not lawful, although the constable refused to tell the reason for the arrest at the time, and said merely that it would be given at the police station. The learned judge appears to have regarded the arrest as fully lawful. In *Christie's* case, Lord du Parcq (at p. 602) appeared to regard *Bentley* as consistent with the opinion then being rendered by the House of Lords, but it seems impossible to reconcile with the speeches of Viscount Simon and Lord Simonds in that case. The former quoted with approval the rule in Archibald's *Metropolitan Police Guide*: the person making the arrest should *at the time* state on what charge the arrest is being made. Viscount Simon added: "If a policeman who entertained a reasonable suspicion that X was committing felony were at liberty to arrest him and march him off to the police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed" (at p. 588). So also Lord Simonds at p. 593.

The only other authority quoted by Lord du Parcq was *Woolmer* (1832) 1 Mood.C.C. 334, an arrest by a watchman on suspicion of felony. The watchman did not state the reason for the arrest at the time; yet resistance was held illegal. It appears, however, that the judges thought the arrest completely legal notwithstanding that the reason why it was made was not communicated to the accused. In this respect the decision is at variance with the rule as settled in *Christie* v. *Leachinsky*. It may also be noticed that Lord du Parcq himself did not adopt to its full extent a doctrine of *rebellion*, for he conceded that if the policeman assigns a reason for the arrest which is not sufficient, resistance is lawful. There would seem to be no difference in principle between the assignment of an insufficient reason and a refusal by the policeman to comply with his legal duty of assigning a reason. In either event, on the majority view, there is a liberty to resist the arrest.

Effect of non-compliance with rule in Christie v. *Leachinsky*

If the rule in *Christie* v. *Leachinsky* is not complied with, the whole arrest is unlawful. The Commissioners who prepared the Draft Code of 1879 proposed to change this by declaring (in section 42) that failure to notify the cause of arrest does not make the arrest *ipso facto* unlawful, but is merely relevant to the inquiry whether the arrest might have been effected by reasonable means in a less violent manner. Under this rule, which is adopted in the Canadian Code, s. 40, and the New Zealand Code, s. 61, only the excess of violence is wrongful.

It leaves without redress a person who, not being notified of the cause of arrest, still "comes quietly." This is not only an undesirable incentive to resistance, but, in a peaceable community, leaves the duty to state the reason for the arrest without effective sanction. Moreover it neglects the fact that even one who "comes quietly" suffers a wrong if he is not told the reason for his arrest, for he is deprived of that early statement of the charge against him which it is the object of the law to secure. In these respects the English rule as settled in *Christie* v. *Leachinsky* is preferable.

Trial of a Deaf Mute

By J. Jones Roberts, *Barrister-at-Law*

R. v. Roberts

George Roberts, a deaf mute, was indicted for murder at Cardiff Assizes on March 23, 1953. A jury found that he was mute by the visitation of God. Then arose the further issue—and it is in relation to this issue that the case is of importance—of the prisoner's fitness to plead, and whether that issue should be decided forthwith by a jury sworn to try it or whether it should be left to be decided by a jury sworn to try the accused on the general issue of Guilty or Not Guilty, a plea of Not Guilty being entered on his behalf. There was agreement that, if the jury found the accused "unfit to plead," the judge, Devlin J., would have no alternative but to order his detention as a Broadmoor patient till Her Majesty's pleasure should be known, following *R.* v. *Governor of Stafford Prison, ex p. Emery* [1909] 2 K.B. 81, and section 2 of the Criminal Lunatics Act, 1800. The jury would be instructed in accordance with the directions given by Alderson B. in *R.* v. *Pritchard* (1836) 7 C. & P. 303, and subsequently followed and approved, that they should inquire whether the accused was of sufficient intelligence to comprehend the course of the proceedings and to make a proper defence, and to instruct counsel or to challenge a juror.

It is established that "the proper time to raise the question of the prisoner's fitness to plead is before he pleads": *R.* v. *Southey* (1865) 4 F. & F. 864. There has been some doubt as to whether it is for the prosecution to prove "sanity" or for the defence to prove "insanity." It was said in the course of this case that there was no precedent for trying the fitness to plead before the general issue on the application of the prosecution. In the course of his judgment Devlin J. observed: "the issue here is the fundamental one . . . whether the position of the defence can be so put that learned counsel has to choose between fighting the general issue or dealing with the issue of fitness to plead."

It may well happen in such a trial that counsel for the defence may desire to test the case for the prosecution or, indeed, he may consider that he has a full answer to such case as the prosecution can put forward. In those circumstances it is thought to be intolerable that he (counsel for the defence) should be precluded from fighting the general issue and be confined to the issue of his client's fitness to plead—with the inevitable consequence to his client in the event of a finding of unfitness to plead. Devlin J. decided that no such election should be forced upon counsel for the defence, and found in *R.* v. *Berry* (1876) 1 Q.B.D. 447, a procedure which enables that kind of election to be avoided, *i.e.*, the defence can have the general issue tried without abandoning the right to fall back upon their client's unfitness to plead. In *Berry's* case the question of fitness to plead was submitted to a jury in conjunction with the general issue; the jury found that the prisoner was guilty on the indictment, but that he was not capable of understanding and had not in fact understood the nature of the proceedings. The Court for Crown Cases Reserved ordered him to be detained under the Criminal Lunatics Act, 1800, s. 2, as there was no conviction and the finding of the jury amounted to a finding of insanity. *Berry's* case conforms with the earlier authorities on the questions put to the jury and only differs as to the time when the verdict was taken, that, as Devlin J. said, "being only, I think, a difference of procedure."

Another and distinct issue in this case concerned statements which it was asserted that the prisoner had made through an interpreter, a person of long experience and great skill in dealing with deaf mutes. It was objected on behalf of the defence that the accused could not have made and did not make the statements alleged to have been made by him and further, that, if made, they were not made voluntarily. Devlin J. decided that if, in the first place, he found that there was some evidence fit to go to a jury that they were the accused's statements, he would admit the statements and let them go to the jury. The second question, *i.e.*, whether the statements were made voluntarily and were obtained in accordance with the Judges' Rules, he would decide in the ordinary way.

In the sequel the prosecution offered no evidence and, on the judge's direction, the jury found the defendant Not Guilty.

The Psychopath and the McNaghten Rules

By H. B. Walton, *Barrister-at-Law*, and C. Doherty

R. v. Wilkinson

There is special interest at this time in a case which illustrates clearly just how the McNaghten Rules are at present interpreted and applied to a defence of insanity. Broadly, the current tendency is towards rigid application of the rules and exclusion of the whole category of " psychopathic " derangements from mild abnormality to habitual grave abnormality including atrocious anti-social conduct.

Wilkinson, a 24 years old furnaceman was tried before Mr. Justice Hilbery at the Central Criminal Court on November 2 and 3, 1953, and was found Guilty and sentenced to death for the murder of 5 years old Miriam Susan Gray on August 15, 1953. It was conceded that he was an abnormal man. Two doctors had described him as a psychopathic personality, but both stated that in their opinion he was not suffering from any known disease of the mind. The defence had attempted to establish that the accused man was insane at the time he committed the act but the judge ruled that there was no evidence of insanity in law.

There are apparently two schools of medical thought on " psychopathic " mental illness. The majority of psychiatrists take the view that psychopathy is not a disease of the mind, although there are some who consider that it is.

The medical evidence which emerged during the trial of Wilkinson is not uninteresting, and it is worth giving in some detail. But before coming to that it is necessary to know what the case was about.

Mr. Christmas Humphreys, who appeared for the Crown, told the jury that the facts were not in dispute and the only issue for them to consider was whether Wilkinson was sane or insane according to law, at the time he killed this child.

In June, 1953, Wilkinson took a furnished room at a house in Boundaries Road, Balham S.W., which was the home of Mr. and Mrs. Schreiber. Mrs. Schreiber was the mother of five years old Miriam Gray. On the evening of August 14 this little girl was put to sleep on a divan in the kitchen, and at 10 p.m. Mr. and Mrs. Schreiber went to bed. Next morning, on going downstairs, they found the kitchen half filled with smoke and Miriam lying dead. According to the medical evidence she had three injuries to the head caused by a blunt instrument, there were bruises on the neck and she had been sexually interfered with. Death was due to fracture of the skull.

Mr. Humphreys said a certain amount of property, mostly food, was missing from the house, and Wilkinson had disappeared. He was arrested some 18 hours later near Surbiton. Taken to Balham police station, the defendant made a written statement in which he said: "I went down the cellar and took a bottle of vermouth and a bottle of beer, and took them to my room. They were all asleep. I had a glass in my room and drank both bottles. I drank a drop of vermouth and a drop of beer, I kept on like that. I wasn't drunk and I wasn't sober. I got up off the bed and pulled my chair to pieces. I got one of the legs and then I got a blanket, it was my own. I tore a piece off it, wrapped it round the leg, and tied it with two handkerchiefs. I picked up the chair leg and went downstairs with it with the torch. I went into the kitchen and shone my torch on the bed. Then I struck her on the head with the chair leg. I could not stop myself hitting her. I put my hand round her throat and squeezed. She made a funny noise. I took off her pyjamas and tried to interfere with her. Something inside me stopped me and I put them back."

The statement went on to describe how Wilkinson tried to get into the front room and the middle room of the house but the doors were locked. "I had made up my mind to run away and I started looking round for some food to take with me" he continued. The defendant said he collected the food and, picking up a butcher's knife, he went into the front garden and removed the putty from the french windows of the middle room, but the glass broke. Entering the room he found 2s. in cash, a spy glass and a pair of binoculars which he put in his pocket. He next found a shilling, some coppers and some chocolate. Before leaving that room he cut the telephone wires. In another room he found a suitcase which he filled with tins of food. The defendant said he next changed his clothes and, going into the kitchen, set fire to two towels which were hanging on a line. Finally, he left the house.

Counsel said that Wilkinson, according to his statement, had decided to go to Guildford. He abandoned some of his luggage and followed the South Circular Road on to the Kingston by-pass. Being tired by 1.30 p.m., he went to a cinema and remained there until the place closed, when he started walking again. It was then that he was stopped by a police-constable

Detective Superintendent Morris in evidence said that when he searched Wilkinson's room he found a novel entitled "Vengeance" and two magazines called "Show Girls" and "Bedside Clubman."

Mr. Humphreys commented that so far as the case for the Crown was concerned these books were of no relevance, but he understood counsel for the defence had some questions to ask about them. The book "Vengeance" contained a reference to a person being subjected to a protracted beating with a wooden instrument.

Opening the case for the defence Mr. Gilbert Rountree said that he proposed calling certain evidence in order to try and prove to the jury's satisfaction that Wilkinson was insane at the time he committed this act. First it was necessary to establish that the defendant was suffering from a disease of the mind. "If you are satisfied that he was you will have to consider how far it had affected his reason," said counsel. "You have to be satisfied about one of two things—that because of a disease of the mind Wilkinson did not know what he was doing, or if he did know then he did not know it was wrong."

Mr. Rountree said that according to the defendant's mother, Wilkinson was one of ten children. Four of them died in fits or convulsions. Her husband was treating her and the family very badly at the time Wilkinson was born. An aunt and a niece of the defendant's mother had died in asylums and another close relation had died while under restraint for insanity. When the accused was a young child it was necessary to take him to a welfare advice centre, and psychiatric treatment was recommended. A mental specialist advised treatment in a sanatorium. As Wilkinson grew up he was abnormal, he was frightened of the dark and was fidgety. When the war came he had the misfortune to be evacuated to a home in the country where he was badly treated. At the age of 10 he walked all the way from High Wycombe to London because he was so unhappy as an evacuee.

Mr. Rountree said that it was about this time that the accused man stole something and he was placed on probation. As a result of the interest taken in him by a probation officer he was sent for treatment to the Maudesley Hospital, S.E.

Counsel said that since completing his army service Wilkinson had been restless and unable to sleep, and his own doctor had prescribed pheno-barbitone tablets.

Finally, said Mr. Rountree, he proposed calling Dr. Desmond Curran, one of the country's foremost psychiatrists, who had carried out a careful examination of the defendant since his arrest.

Dr. Curran, in the witness box, said that he had examined Wilkinson at Brixton Prison on October 9 where he was given every assistance by the prison medical officer. Electro-encephalograph tests had previously been carried out and Dr. Curran said he had studied the readings.

"I have no doubt this man is a psychopathic personality, but I do not consider he is suffering from any mental disease" the witness went on.

The judge then asked Dr. Curran what he meant by psychopathic personality, and added: "I am collecting from various psychiatrists their definitions."

In reply, Dr. Curran said his definition would be this—a psychopathic personality was a person of habitual abnormal behaviour, behaviour that had been abnormal since childhood. Such a person displayed abnormal emotional reactions, abnormal outbursts of temper, outbursts of impulsive violence after alcoholic excesses accompanied by suicidal attempts and, in some cases, by homicidal attempts.

This prompted the judge to comment: "Every habitual criminal must be a psychopath if that is so."

Dr. Curran in reply said he did not think every habitual criminal would show all the characteristics he had described.

The next question put by the judge was this: "Plenty of men are addicted to alcoholic excesses. Are they all psychopaths?" and the witness answered: "One cannot say that."

It was apparent that the judge was still not happy with Dr. Curran's definition of a psychophathic personality, because he then asked: "What on earth is meant by such a phrase as 'abnormal outbursts of temper'?"

Dr. Curran said he was using the word abnormal as meaning unusual.

Continuing, Dr. Curran said that in their relations with society, psychopaths failed at those points where they touched society. Their work records showed that they had had as many as 40 or 50 jobs. They would lose their employment because they struck someone, or they would go off in a sulk. The same thing applied in their married life and sex relations. A psychopath had no sense of responsibility. He could not learn by his mistakes and punishment was of no avail.

Mr. Rountree: You have told us psychopathy is not a disease of the mind, but is it not true to say that in the opinion of some psychiatrists it is?

Dr. Curran agreed that that was so.

The witness went on to say that Wilkinson was above the average of intelligence. The electro-encephalograph examination showed evidence of only mild abnormality. There was nothing to suggest he was an epileptic.

Replying to further questions, Dr. Curran said that psychopaths had three characteristics—systematic abnormality of character, emotional outbursts and anti-social behaviour. They were frequently strikingly immature and tended to respond to the temptation of the moment without regard to the consequences.

"I have no doubt Wilkinson would be classed as a psychopathic character by any psychiatrist," said Dr. Curran.

Referring to the circumstances of the crime, the witness said that there was good reason to believe that Wilkinson was under the influence of alcohol at the time it was carried out. Wilkinson had said there was no motive and he could offer no explanation. "It may be he killed the child impulsively in order to get rid of a potential witness. He emphasises that he was not in a state of mind to think whether what he was doing was wrong," continued Dr. Curran. "I have no doubt this prisoner is the possessor of a highly psychopathic personality. In killing the girl I am satisfied he knew what he was doing. He says he wasn't drunk as he often has been."

Cross-examined by Mr. Humphreys, Dr. Curran agreed that in the world of psychological medicine there were a great number of classifications, and that at the present stage there was a tendency to put in a new group those persons who did not suffer from a disease of the mind, but who suffered from some form of character deficiency.

Mr. Humphreys then asked: "Is it right that a psychopath is a person who suffers from a character deficiency rather than a disease of the mind?"

Dr. Curran agreed that that was the usual view.

The judge then asked Dr. Curran: "Did you observe that immediately the prisoner made this little girl unconscious he made some attempt at sexual intercourse?"

Dr. Curran said Wilkinson had told him that.

The judge: Might that not have been the motive from the start, to go down and knock that child unconscious and then to ravish her?

Dr. Curran agreed that it might have been but he could not say.

The judge: Cases of men who do that sort of thing are not unknown in your profession?

Dr. Curran: No, they are not.

The judge: And such a person is not necessarily suffering from a disease of the mind?

To this question Dr. Curran answered: "I am not suggesting that Wilkinson has a disease of the mind."

When the judge asked Mr. Rountree: "Where is the evidence now of insanity in law," counsel replied: "It lies in this, that Dr. Curran has described a state of mind about which he says 'I do not myself call that a disease of the mind, but some experts do.' Therefore I rely upon the law as I understand it, that it is for the jury to say whether this is insanity or not. There is some evidence upon which they could find there is a disease of the mind."

Dr. J. C. M. Matheson, senior medical officer at Brixton Prison, said in the witness box that he agreed with Dr. Curran that Wilkinson could properly be described as a psychopath.

Mr. Humphreys then asked the doctor: "Do you agree that a man is classified as a psychopath when he cannot be classified as suffering from any known mental disease?" and the answer was: "Yes, I agree with that."

Replying to another question the doctor said that Wilkinson was not suffering from any mental disease which would bring him within the McNaghten Rules. At the same time he was an abnormal man, who could properly be described as a misfit, or a psychopath.

After hearing this evidence the judge asked for a second time: "Where is there evidence of insanity?" and he went on to say that to establish a defence on the ground of insanity it was necessary to prove that at the time of committing the act charged the accused was labouring under such defect of reason from disease of the mind as not to know the quality or nature of his act, or that if he did know what he was doing, then he did not know it was wrong. "The evidence is that this man is not suffering from a disease of the mind but is a psychopath, a person who is liable to habitual abnormal behaviour, or liable to suicidal or homicidal tendencies, who is out of touch with society and so on. That does not bring him within the McNaghten Rules, does it?"

Mr. Rountree pointed out that the jury had the life history of the defendant, and they had heard two doctors say he was a psychopathic personality. Although Dr. Curran and Dr. Matheson did not regard psychopathy as being a disease of the mind there were some medical men who did.

The judge observed: "There are psychiatrists who say there is no such person as a wicked person, but that such persons are mentally sick. The law does not look for what may well be regarded as insanity. The law looks for the degree of insanity due to a mental disease which should and does exonerate a man from criminal responsibility. There well may be things the doctors would call insanity, but in law we are looking to see if the man is criminally responsible."

Mr. Rountree: It is for the jury to find whether that state of affairs exists.

The judge: Yes, but on evidence. Do you say this man is suffering from a disease of the mind on the evidence of the mother?

Mr. Rountree replied that he was not suggesting that.

After further discussion with counsel, the judge said that he could find no evidence to leave to the jury that Wilkinson was suffering from a disease of the mind. "I shall tell the jury I can find no such evidence," he said. "The burden is on the defence to establish that this man is suffering from a defect of reason such as he would not know what he was doing was wrong."

Mr. Rountree indicated that if that was his Lordship's ruling he did not propose to address the jury.

The judge in his summing up told the jury that in his view there was no evidence that the accused man was suffering from any defect of reason due to disease of the mind such as to make him not responsible for his acts. "It is responsibility that the law looks at," continued the judge. "Our law is that a man must take the consequences of his act. Unless the contrary is established by evidence you have to deal with him as though he is sane. There is not a shred of evidence so far as I can see that this man was suffering from any classifiable disease of the mind at the time. Counsel for the defence could not suggest that the evidence of the mother as to the accused man's childhood could by itself be any evidence of disease of the mind."

The jury then retired, and after considering their verdict for a short time they found Wilkinson Guilty, and he was sentenced to death.

Wilkinson's appeal to the Court of Criminal Appeal was dismissed on December 1, 1953.

This and That

Looking along the shelves of the "Notable British Trials Series" in the library the other day it was difficult not to feel something like nostalgia for the great prisoners of the past; Crippen with his impossible wife, Mary Blandy with her arsenical love potion, and the enigmatic Madeleine Smith. The truth is that nowadays in a Welfare State with reasonable divorce laws an ordinary human being never gets into the position where another life stands between him and love, security, or even the respect of the world. Murder has sunk in the social scale and has become the weapon only of the intensely stupid or the sexually depraved. In this respect the detective writers are behind the times; the distinguished middle-class suspects in Mrs. Christie's books are no longer conceivable as murderers, any more than they are conceivable as house breakers. For them only remain the upper-income-group crimes which have to do with currency offences, share pushing and public lavatories. It is rarely now that in reading the report of a murder trial you get the feeling of "There but for the grace of God . . . ," or the fear and the pity extending to the criminal and the victim which is part of the terrible fascination of the classic volumes of the famous red series.

* * * * * *

Those chatty columns in the evening papers about police courts can be particularly irritating if read after just leaving one. In them the proceedings always appear to move with the gaiety and swiftness of a well-rehearsed musical comedy. Albert, the habitual drunk, bobs up in the dock and makes his habitual funny remarks about celebrating the relief of Mafeking; kind old Mr. A, the magistrate, a cross between Mr. Pickwick and Santa Claus, beams through his spectacles and fines him thirty shillings. What the reader doesn't learn about are the long delays and frustrations due to the overcrowded lists, the cases which are half heard and then adjourned for a fortnight, the matrimonial cases, of vital importance to the parties, which have to be squeezed in at the end of a list of summonses for obstruction on which the same barrow boys pay the same fines week after week. However the style of the newspaper police court columns is fascinating and easily caught, and tedious hours waiting in the corridors can be filled in by applying it to the advocates who habitually practise in such courts. For instance, " Sydney is a young barrister whose innocent face reminds one of apple orchards and organ lofts. He looks round the court with a confused expression and glances sadly down at the figure on the back of his brief. Mr. A coughs and gently reminds him that he has no right to make a speech in reply. Sadder and wiser, Sydney returns to the fields and open spaces round his native Mill Hill." Or, " Henry is a solicitor whose face, lined like an old leather glove, just shows above the partition in the well of the court. He wears a jaunty but faded white carnation and has already spoken for half an hour without looking at his brief. Mr. A looks severely over his spectacles : ' If we don't finish this case soon,' he threatens, ' I shall sit specially on Saturday afternoon.' "

* * * * * *

This was a story I heard while pacing the corridors; those places of lost footsteps where barristers and solicitors spend so much time discussing their children, their gardens, and their other cases. A man came in one afternoon from the police court across the road to a solicitor's office in the East End. He was in a state of alarm and indignation, and wanted to appeal against his conviction for stealing a bottle of milk, for which offence he had been bound over. The managing clerk told him that it wasn't worth an appeal. " It's the indignity I mind," the man said; " the loss of reputation." " Surely it won't do you much harm," the managing clerk said; " what's your job ? " " I'm a safe-blower, I am. I'll never hear the last of this when the boys find out I've been done for knocking off a bottle of cow-juice ! "

" GEOFFREY LINCOLN."

A Day in a Police Court

By A. E. Jones

Magistrates' Clerk

The series of which this is the first instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Introductions

Although the building was now officially a magistrates' court, the words "Police Court," cut when it was new, still appeared on its face. Police officers constituted a large part of its staff and police officers brought a large part of its work so, to its public, it remained a police court.

The Gaoler

Its day began at half past seven when the resident caretaker opened the private door to sign for the numerous registered letters which the postman brought with the mail each morning. Soon afterwards Sergeant Chumbleton, the gaoler, arrived to take charge of the prisoners who would shortly be coming in the prison and police station vans. Those best qualified to judge spoke well of Sergeant Chumbleton. When the bell rang in his cells it was answered first time. If the regulations allowed you to have what you asked for you got it; if it wasn't permitted you didn't get it, but there was no unpleasantness. It was not that he had a soft heart for criminals; he considered that they were getting what they had asked for. But they did not cease to be human beings on that account and he treated them with the tolerant, unsentimental humanity that was natural to him.

He had two assistants, Police Constable Mure and Policewoman Labbiss. The latter looked after the female prisoners and also made tea. By the time the first pot was brewed the warrant officer, Sergeant Quing, and his two assistants, P.C. Blaystake and P.C. Knebble, had changed into their uniforms and were ready for a cup and the day's work. Shortly afterwards Blaystake set off with his summonses and warrants while Knebble remained behind to help the warrant officer with the book work which his duties, like all other official activities, entailed.

The Warrant Officer

Summonses and warrants were the stock-in-trade of Sergeant Quing's office—not only those signed by the magistrate, Mr. Sutterthwick, but also those issued by other magistrates' courts against individuals living within his jurisdiction. Only those for the more serious criminal offences were booked out to the detective branch of the police; it was the responsibility of the warrant officer to see that the rest took effect. And all those summonses and warrants had to be dealt with in conformity with certain rules. Some warrants could be executed on a Sunday, but with others that would be illegal; in certain cases you could arrest a man on a warrant without having it in your possession at the time, but that did not apply to all warrants; there were circumstances in which you were entitled to seize under a distress warrant goods in the possession of a defendant though not his, but certain goods could not be taken even if they belonged to him; a few summonses could be left at a defendant's place of business, but most had to be served on someone at his home, if not personally—and some must be served personally; many summonses could be sent out by registered post, but there were exceptions; not all summonses and warrants would be acted on in Scotland should the defendant happen to live or go there, and a special procedure was laid down for sending your document to the Channel Islands or the Isle of Man. There were many other points to bear in mind when dealing with summonses and warrants. Sergeant Quing could consult Mr. Frell, the magistrates' clerk, on any particular tricky twist in this legal maze, but it was his job to know his way and guide his assistants through its main convolutions. And if they put a foot wrong, at the least a summons which should have been effective would be recorded by the magistrate as "not served"; and, at the worst, there might be an action for damages against the police for trespass, illegal distraint or even unlawful detention.

Blaystake and Knebble did the bulk of the work of serving summonses and executing warrants. Summonses were usually disposed of quite easily on the daily round because most of them could be left with someone in the defendant's home if he was not in; but sometimes it was very hard to find the person for whom a warrant had been issued. In specially difficult cases Sergeant Quing's experience and active participation might be needed. Keeping observation—sometimes late at night, sometimes early in the morning—had given Sergeant Quing and his assistants their most spectacular-looking successes. A man who owed a £60 fine for running a lottery had been watched for at the Labour Exchange nearly a fortnight before he came at last to " sign on "—and, contrary to his intention, to settle his debt to the court from a wad of notes. A prostitute, shadowed for the greater part of a night, in the end unconsciously led the warrant officer to her protector who had not paid a £150 penalty imposed on him for keeping a gaming house. A husband, £40 odd in arrears under a wife maintenance order was, after several Saturdays of vain attendance at the local greyhound racecourse by Quing and Knebble, eventually spotted there after what had, up to then, been a good day for him, and the warrant was executed by the sergeant receiving the whole amount due on it. These were financial high-lights; but the common lodging-house drifter whose 5s. fine for being drunk was still outstanding might be just as troublesome, and as an uncleared entry in the books demanded just as much attention.

One of Sergeant Quing's morning duties was a visit to the gaoler's office to see whether anybody he had a warrant for was now safely in the court cells through imprudently getting arrested for some further offence. He found Sergeant Chumbleton and his assistant Mure busily engaged entering up records from the charge sheets sent by the police stations and searching the books for any previous convictions of their day's bag. Two other individuals were active in the gaoler's office. The reporter from the local newspaper was going through the charge sheets to see what was likely to have copy value in the morning's work and to make sure he got the correct spelling of names and addresses so that nobody should be accidentally libelled. And Inspector Campting, who was present in court each day to answer for the conduct of the police and to act as official intermediary for any suggestion the magistrate might wish to make to the police authority, had been called on to perform a duty appertaining to his rank and was reading over with the formal " caution " a further charge against a prisoner appearing on remand.

The General Office

The building was not yet open to the public, but police officers connected with the morning's cases were drifting in through the back way used by the prison vans. The General Office was no longer a silent desert of forms and files. Clinter, the assistant clerk, aided by Preskedge, the second assistant, and Mrs. Fenstone, the cashier, were busy dealing with the mail. The contents of the opened envelopes were sorted into piles, the biggest of which consisted of remittances for some of the six hundred or so women on whose account over £3,000 every month was paid into court by husbands and fathers.

Each amount received had to be entered in the Day Book and also on the applicable account card from the numbered files which were stored in tall steel cabinets round the office walls, and which contained the complete court history of each "periodical payment" case from the record of all payments made and correspondence with the parties to the notes of evidence taken at the original hearing, and in any subsequent proceedings there might have been, for variation or enforcement of the order. Some two hundred and fifty times a day the drawers of these cabinets were opened either to enter a payment in, or to get a woman's signature for a payment out, or else to confirm for her the sickening tidings "nothing in yet." It was Mrs. Fenstone who, with assistance from Clinter or Preskedge in times of congestion, attended to the flow of this monetary pipe-line called "payment through the court"; and it was perhaps a tribute to the good-humoured cheerfulness she displayed to all her customers—however rough or ugly—that in spite of her widowed grey head she was always referred to—even by reluctant payers and disappointed payees—as "the young lady."

The other money which came through the post and was now, with its attendant letters of enclosure, forming a second pile on Clinter's desk, did not go into the till over which Mrs. Fenstone presided. It represented fines and costs for which time to pay had been given, and, after entry in the Day Book, it was paid into the court's banking account. Later on in the day, when the assistant clerk had time, it would be his task to make up the regulation accounts, allocating the costs received to the various prosecutors and the fines to the Home Office, the Road Fund, or the Exchequer—according to the Act of Parliament under which the proceedings had been instituted. Sometimes when an offence had been committed against a seldom-used statute Mr. Frell, the clerk, might have to undertake a little legal research to ascertain the proper destination of the penalty imposed.

There were few letters in the routine correspondence of the court that the assistant clerk could not deal with without special instructions. Most of them that came without money did not require any answer. They formed the third largest heap on Clinter's desk and consisted of missives designed by their writers to be put before the magistrate at the hearing of a summons which they did not propose to answer. The warrant officer had these letters and saw to it that they were attached to the appropriate summonses when the cases were heard. The remaining two sub-divisions of the day's mail were the letters which could be answered or acted on by the assistant clerk and those which had to go to the clerk for a reply or instructions. They brought into the working picture of the General Office the fourth member of its staff, Miss Webercourt—though actually she commenced her duties before her services were required in connection with correspondence. For she was employed in a dual capacity and she would have been puzzled to say whether she was a shorthand typist who operated a telephone switchboard in her spare time or a switchboard operator who took down letters and typed them as a sideline.

The Probation Officers

While the staff of the General Office was struggling to get through the post before the court opened to the public and women started coming for their money, three other workers at the court were beginning their day's work in an office across the road. They were the probation officers, Mr. Thorburton, Miss Garrafrey and Mr. Caylip. They had a room in the court for use while the building was open to the public, but they required as well a place where they could be visited when the court's doors were closed. For the probation officers' job was to run a sort of moral surgery-cum-confessional for all in trouble. Certain of their patients were statutory ones—the offenders on probation. But in addition their office acted as a clinic for a wide variety of domestic ills. They were consulted by women who were going to have or had had illegitimate babies, by parents who found their children getting out of hand, by people "living in sin," by wives whose husbands had deserted, neglected, ill-used or been unfaithful to them, and by husbands whose wives had treated them similarly. By any of these the probation officers might be called on for advice or help—common-sense advice on how to live their lives, and technical help in directing them to whatever welfare agencies, voluntary or official, could aid them in their difficulties.

It was a queer job, yet concerned with very ordinary people; a job bounded by statutory rules and records yet depending essentially on individual personality and free lance effort; a job of meddling in unpleasant affairs with the highest aims; a job which discouraged delicate feelings and fine sentiments but deepened tolerance and understanding; a job which engaged one in the service of the humblest, yet gave the thrill of power by its opportunities to shape the lives of other human beings; a job which was a constantly renewed struggle against a never-ending flood of human folly, stupidity and wickedness, but a job for which inspiration was also constantly renewed by successes. It was work which attracted many different kinds of men and women. Some took their feeling of vocation from religion, others from the modern social sciences, yet others simply from a warm humanity. All three types were represented in Thorburton, Caylip and Miss Garrafrey, but whatever their personal views, the facts of human nature and the law usually demanded from them a similar approach to their cases.

This morning it was Caylip's turn to remain in the office to deal with any regular customers who might call, while the other two would go across to the court as soon as its doors opened. In their room there they had a preliminary interview with all who had come under the stress of some domestic trouble to pray the aid of the magistrates' court. Some of the husbands and wives who came had definitely made up their minds that their married life must be rounded with a summons. But in other cases they wanted principally to find a sympathetic listener, and they welcomed the probation officer's invariable offer to try to hammer out with both sides a design for happier living.

The Public

Miss Garrafrey and Thorburton entered the court by the back way just before, promptly at ten, Police Constable Jympton, who acted as a sort of commissionaire to the building, opened the big double doors of the public entrance. By this time a few little knots of people and a number of solitary individuals had collected outside—some boldly on the steps of the building, others, not anxious to advertise their rendezvous, a few doors away. Now, according to their nature and business, they hurried, straggled or slunk into the court—applicants for advice, defendants surrendering to their bail, complainants for summonses, prosecutors and their witnesses, friends and relations of prisoners. Once through the main entrance lobby they found themselves in a large waiting hall, which had long wooden seats all round except where doors opened off into offices, corridors and the court room. The legends painted on these doors introduced the stranger to a new and somewhat intimidating world: "Gaoler," "Warrant Officer," "General Office," "Probation Officer," "Counsel and Solicitors Only," "Court," met the eye, as did also "Private."

It was part of P.C. Jympton's job to help newcomers choose the appropriate room for their business. But many who entered the building knew where to go without asking Jympton. Defendants who had come in front of the magistrate before made their own way to the door labelled "Gaoler" if they had been arrested on a charge, or to the one marked "Warrant Officer" if they were answering a summons. The woman who came to collect the money which some man had been ordered to pay weekly was soon familiar enough with the General Office to open the door without knocking. And the woman whose man was a defaulter with a warrant for arrears out against him knew that she had to go to the warrant officer if she wished to inquire about the prospects of an arrest, or give some fresh information which might accelerate that happening.

Another class of habitués was concerned only with the door which bore the legend "Court: Public Entrance." They were the general public—the queer lot who found in the daily washing of dirty linen a source of free entertainment. The man who began to feel so much at home that he left his bicycle in the waiting hall until the outraged caretaker spotted it, had withdrawn his custom in a huff. But the court still had half a dozen regular patrons (though they rarely all attended at the same time) and there were always friends, relations and neighbours of those who would be figuring in the day's proceedings. However, most of those who entered the building would not have come if they had had another choice, and they were usually only too anxious to let it be known that they "had never been in such a place before." P.C. Jympton had to use tact in sorting them out; it would never do to ask a question which had the wrong implication.

Prosecutors and witnesses were told to sit in the waiting hall till their cases were called. Persons with forms they wanted the magistrate to sign were directed to the General

Office for fees to be paid and for it to be verified that the documents were properly filled in and were within the competence of the magistrate to sign. To the General Office was also referred any inquiry which Jympton could not classify in any other way. So, occasionally, an irate individual would enter dramatically, smack down on the counter some document received from the court, belligerently demand an explanation and then gradually soften as Clinter's patient exposition brought a disconcerting feeling that perhaps it might be right after all. At other times vague, ineffectual beings drifted in hardly knowing themselves what they came to ask, and Clinter would have to put the questions into their mouths before giving the answers.

In the Warrant Office, Sergeant Quing groomed his complainants for presentation to the magistrate, experienced interrogation soon stripping irrelevancies from their stories, and extracting from garrulous and tongue-tied alike the kernel of their trouble. This would be put by the warrant officer in brief, simple words, when later he introduced the applicants to Mr. Sutterthwick. But though the magistrate's inquiry into a complaint could be shortened in this way it could not be short-circuited. There were cases which, the warrant officer well knew, did not come within the jurisdiction of the court, and some which were not within the cognisance of the law at all, but nobody who wished to put his grievance before the magistrate was denied access.

The Clerk and the Magistrate

Shortly before ten there arrived Mr. Frell, the clerk of the court, and he was immediately plunged into his day's work which, when he was not sitting in court, included giving a ruling on all technicalities, the duty of seeing that all the directions of the magistrate were carried out, and the general supervision and control of the activities of the staff of the court.

A little later, a slightly-built, middle-aged man, with a puckered face, stepped off a bus at the stop near the court, and the conductor said to an inside passenger: "Know him? That's old Alec Sutterthwick. His job's handing out six monthses like mine's handing out tickets." The magistrate made his way to his private room; there were things to do before he would be ready to take his seat in court and begin the work so picturesquely summed up by the bus conductor.

A Private Prosecution

By R. G. WATERHOUSE, *Barrister-at-Law*

R. v. Harrison

Harrison appeared before the Sale justices on April 29, 1953, charged with attempting to murder one Wright or, alternatively, of causing him grievous bodily harm with intent. The attack was alleged to have taken place in a cowshed when only Harrison and Wright were present. According to the evidence of Wright, Harrison struck him several blows on the head with a hammer, having previously handed him a cheque for over £800, which was later found to be worthless. At the preliminary investigation before the justices the defence case that Wright was in fact kicked by a cow was put to the prosecution witnesses by Harrison's counsel but Wright was adamant that he had been struck with the hammer. No evidence was called on behalf of Harrison nor did he give evidence himself, but the justices nevertheless refused to commit him for trial on either charge.

Wright then made a written application through his solicitors to Ormerod J., sitting in chambers, for consent to the preferment of a bill of indictment under section 2 (2) (*b*) of the Administration of Justice (Miscellaneous Provisions) Act, 1933, and Rule 3 (1) (*c*) of the Indictments (Procedure) Rules, 1933. The application, which was posted to the judge (Rule 4), consisted of a short statement of the refusal to commit and otherwise complied with the requirements of Rules 5 and 6 (2), being accompanied by copies of the proposed bill and of the depositions and by an affidavit sworn by Wright verifying the statements in the application. Leave to prefer a bill for the lesser offence of causing grievous bodily harm with intent was granted on July 16, 1953.

It thus became necessary for the solicitors acting for Wright to ensure :—

(a) that a bill of indictment was signed and the case included in the calendar for the next assizes;

(b) that all the evidence would be available at the trial including the original depositions and exhibits as well as the witnesses to give oral evidence;

(c) that proper steps were taken to secure the appearance of Harrison to plead to the bill of indictment.

The Clerk of Assize was therefore supplied with a copy of the order by Ormerod J. and a copy of the depositions. He was asked to arrange for the signing of a bill in the terms of the order and to communicate with the governor of the local prison in order that the case should be included in the calendar for the next assizes. He was also requested to secure the original depositions and such exhibits as were still in the possession of the clerk to the Sale justices. The Clerk of Assize agreed to take these steps, but it is understood that there may be some slight variations in the practice of the various circuits in this regard. It may be necessary on some circuits for the solicitors themselves to communicate with the prison governor and to obtain the original depositions and exhibits from the clerk to the justices.

In this case it was subsequently discovered that only 4 out of 11 exhibits had been retained by the clerk to the Sale justices; 2 had been handed to the police and the remaining 5 had been handed to Harrison, the police holding a receipt from Harrison for them. These 5 exhibits consisted of the hammer and the cheque, a bank statement, cheque book and letter. Accordingly on October 9, 1953, a registered letter was sent to Harrison inquiring whether he still retained possession of the 5 exhibits and whether he was willing to produce them at the trial; and on October 15, 1953, notice to produce these exhibits was served upon him personally by a police officer. Crown Office subpoenas were served upon all the witnesses to be called for the prosecution including subpoenas duces tecum on the police officers in respect of the 2 exhibits and Harrison's receipt for the other 5 exhibits. On October 17, 1953, notice of additional evidence was served upon Harrison personally by a police officer in respect of the evidence of the photographer who made photographic copies of the cheque, bank statement and letter. (An order for discovery of Harrison's bank accounts under the Bankers' Books Evidence Act, 1879, was also obtained, and the notice of additional evidence also contained the appropriate details of this.)

There is no statutory provision under which a person against whom a bill of indictment has been preferred under these provisions may be bound over before the termination of assizes to appear to plead to the indictment, nor is it possible to obtain a warrant for his arrest from a justice of the peace until that time. Section 12 of the Magistrates' Courts Act, 1952, is as defective in this respect as section 3 of the Indictable Offences Act, 1848, which it replaces. Only at the end of the assizes can a warrant be issued or a committal order be made by a justice of the peace on production of a certificate of the signing of the bill of indictment. It is possible, however, that a bench warrant could be obtained if a defendant failed to appear even though he had not been bound over to appear (see *Archbold* (32nd ed.) 69, 70). It is probable that in order to obtain a bench warrant the prosecutor would have to show that proper notice had been given to the defendant of the signing of the bill. There is no statutory provision prescribing the notice to be given, but in this case a letter was sent by registered post to Harrison on August 26, 1953, with a copy to the solicitors who acted for him at the preliminary investigation. The letter informed him that a bill had been signed in accordance with the leave granted by Ormerod J. and that he was required to appear to plead to it at the forthcoming assize. This letter was accompanied by a copy of the bill and of the depositions and had the advantage of forestalling a possible application for the trial to be adjourned. On October 12, 1953, a notice in similar terms to the letter and again accompanied by copies of the bill and depositions was served upon Harrison personally by a police officer. Whilst there is no statutory sanction for this procedure it seems to be a practical one which will be recognised by the courts.

Harrison was tried before Hallett J. and a jury on October 28 to 30, 1953. At his trial he produced only the hammer and evidence was therefore called by the prosecution that the exhibits had been handed to him and that notices to produce and of additional evidence had been served upon him personally. The photographic copies of the cheque, bank statement and letter were then proved and admitted in evidence. Harrison was convicted and sentenced to 3 years' imprisonment on November 3, 1953.

After he had been sentenced an application was made by counsel for the prosecution under section 1 (1) (*a*) of the Costs in Criminal Cases Act, 1952, for an order that the costs of the prosecution, which would otherwise have been borne by Wright, should be paid out of local funds. The application, which was granted, was made without notice and in the absence of Harrison who was not affected by it. The local authority, which had borne the costs of the prosecution by the police at the preliminary investigation, but which would not otherwise have been liable if the order had not been made, was not represented at the hearing of the application.

Practice and Procedure

Court of Criminal Appeal

Appeal without leave

For a long time the exact meaning of the words in section 3 of the Criminal Appeal Act, 1907, which give a right of appeal without leave on any ground of appeal which involves a question of law alone, was in doubt. Until recently it was the practice of the court, where an appellant included in his notice of appeal grounds of fact as well as one or more grounds of law, to list the case as an application for leave to appeal unless the grounds other than the ground or grounds of law were of such a trivial nature that the case could be said to be substantially an appeal involving a question of law alone, when it might be treated as an appeal.

In *R.* v. *Robinson* (1953) 37 Cr.App.R. 95 it was contended that this practice was wrong and that in all cases the insertion by the appellant in his notice of appeal of any single ground of law entitled him to have his whole case dealt with as an appeal without leave. The court decided, however, that where a notice of appeal raised questions of fact or mixed fact and law as well as a question of pure law, the appellant was entitled to have the question of law decided without leave, but was not entitled to appeal on the other grounds without first obtaining leave to do so.

This decision has since been followed in other cases, notably in *R.* v. *Newland*, p. 51, commonly known as the Pottery Case, in which various applications by the different appellants were decided first and a special day was fixed for the hearing of the point of law involved, which in due course was heard as an appeal without leave having been obtained.

Certificate of fitness for appeal

In *R.* v. *Yindrich* (1953) 37 Cr.App.R. 118 it was held that where a point of law is raised at the trial it is desirable for the trial judge, if he thinks right, to grant a certificate of fitness for appeal rather than leave the appellant to his right to appeal without leave, the reason being that under section 38 of the Criminal Justice Act, 1948, if such a certificate has been granted the whole of the time during which the appellant has been treated as an appellant will count towards his sentence should the appeal be dismissed, whereas if the appellant is left to his own rights he may lose the statutory period of 42 days unless the court makes a special order.

Assizes

See p. 39 for the details of a private prosecution.

Quarter Sessions

Examining Justices Sitting at Quarter Sessions

In *R.* v. *Powell*, p. 66, the Court of Criminal Appeal decided that the fact that the chairman of the committing justices subsequently sat as chairman to try the case at quarter sessions was not a ground for granting leave to appeal; but the Lord Chief Justice added that it was better that such a situation should be avoided.

Apart from any impression of unfairness, there has always been the practical difficulty that the chairman trying the case may have to rule on a submission that there is no case to answer or as to the admissibility of some piece of evidence when he has already held that there is a prima facie case for trial or has allowed the disputed evidence.

One way of avoiding the difficulty is to arrange for one of the other regular chairmen of the Sessions to take the case; but where there is any considerable volume of work this adds to the difficulties of the clerk of the peace in arranging the lists. It seems better to follow the present practice followed by some chairmen and deputy chairmen of Sessions of refraining from taking depositions in cases which may be committed to their courts.

Nothing was said in *R.* v. *Powell* about committing justices sitting as ordinary members of the bench at Sessions. *A fortiori* there is nothing in law to prevent them from sitting, and they are unlikely to be embarrassed in the way it is suggested that the chairman might be, as they do not take an active part in the trial until after conviction. It would add considerably to the difficulties of the clerk of the peace in arranging a quorum for each court if a busy Sessions adopted a rule prohibiting examining justices from sitting on cases they had committed. It would mean constant shuffling on the bench in the court which deals with the pleas of "Guilty," which often occupy two or more days in the more populous counties, and it would probably be found to be as impracticable in operation as it seems to be unnecessary in principle. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Corrective Training or Preventive Detention

Section 23 of the Criminal Justice Act, 1948, provides that if, for the purpose of passing a sentence of corrective training or preventive detention, an offender does not admit his previous convictions "the question shall be determined by the verdict of a jury." Where an offender has been committed to quarter sessions for sentence, *R.* v. *Browes*, 33 Cr.App.R. 164; [1949] 2 All E.R. 449 is authority for the passing of a sentence of corrective training by the appeals committee if the procedure required by section 23 (1) is complied with. But as the appeals committee is not furnished with a jury the clerk of the peace may be excused if he wonders momentarily whether the draftsman of the Act has slipped up. The answer is to be found a little further on in section 29 (5), which provides that in relation to an offender committed for sentence, section 23 (1) is to have effect as if for the words "by the verdict of a jury" there were substituted the words "by the appeal committee . . . of quarter sessions . . . and not by the verdict of a jury." This is not mentioned in *R.* v. *Browes*, *supra*, and it would be useful if, in the office copy of the Act of 1948, section 23 (1) were annotated with the words "As to Q.S. Appeals, see section 29 (5)." [The Clerk of the Peace of Cambridgeshire.]

Magistrates' Courts

Justices' Consultation with their Clerk

Lord Goddard C.J. (November 16, 1953). In three recent cases the Divisional Court has had to consider the question when and for what purposes it is proper for a clerk to justices to accompany them when they retire to consider their decision or to remain in their room while the case is under consideration. It is evident from letters received both by the Lord Chancellor and myself, and from correspondence in newspapers, that there is uncertainty in the minds of magistrates on this subject and, indeed, some degree of misunderstanding as to the effect of what was said in the cases to which I have referred. They are *R.* v. *East Kerrier Justices, ex p. Mundy* [1952] 2 Q.B. 719, *R.* v. *Welshpool Justices, ex p. Holley* [1953] 3 W.L.R. 583, and *R.* v. *Barry (Glamorgan) Justices, ex p. Nagi Kashim* [1953] 1 W.L.R. 1320. I propose, therefore, to endeavour to clear up this matter and I have the authority of the Lord Chancellor to say that he concurs in the statement which I am about to make, as do all the judges who were parties to the decisions I have mentioned.

There are two questions which arise in this connection. The first is, on what matters may justices consult their clerk? The second, and one of equal importance is, in what manner should they consult him?

On the first question it is clear that they may seek his advice on questions of law or of mixed law and fact, and also on questions regarding the practice and procedure of the court. The latter are, indeed, questions of law. There are other matters on which justices may require the assistance of their clerk and on which they are entitled to ask his advice. They may, for instance, ask him for information as to the sentences which have been imposed by their bench or by neighbouring benches in respect of similar offences to that which they are trying. It is, indeed, most desirable that penalties for such matters as obstruction by vehicles, lack of lights and other what may be called public order offences should have some degree of uniformity. Moreover, it would be proper for the clerk himself to call the attention of the justices to the fact, if they do not appear to be already aware of it, that a question of law does or may arise. It would then be for them to consider whether they wanted his further advice on that question.

In no circumstances, however, may justices consult their clerk as to the guilt or innocence of the accused so far as it is simply a question of fact, but if a question arises as to the construction of a statute or regulation they may consult him on whether the facts found by them constitute an offence, because that would be a question of mixed law and fact. They may also properly ask the clerk to refresh their memory as to any matter of evidence which has been given. They can take with them or send for any note the clerk may have taken, and if there is anything in the note which needs elucidation, or if they think that something has been omitted or wrongly taken down, it would be perfectly proper for them to consult him.

They must not ask his opinion as to the sentence which they ought to impose, but they may, as I have said, ask for information as to the sentences imposed for comparable offences, and they most certainly may consult him on what penalties the law allows in any particular case if they do not already know it, and on any consequential matters that may follow on conviction. One obvious instance would be, with regard to certain motoring offences, whether reasons which they are prepared to give can amount to special reasons for not disqualifying a driver according to the decisions of this court on that subject. They may also want to know whether it is a case in which they can require sureties for good behaviour in addition to imposing a penalty.

As regards the manner in which justices may consult their clerk, the court, I think, made it clear in the *East Kerrier* case that the decision of the court must be the decision of the justices and not that of the justices and their clerk, and that if the clerk retires with the justices as a matter of course it is inevitable that the impression will be given that he may influence the justices as to the decision or sentence or both. A clerk should not retire with his justices as a matter of course, nor should they attempt to get round the decisions to which I have referred merely by asking him in every case to retire with them or by pretending that they require his advice on a point of law. Subject to this, it is in the discretion of the justices to ask their clerk to retire with them if in any particular case it has become clear that they will need his advice. If, in the course of their deliberations, they find that they need him, they can send for him. On this matter I would stress one further point, and that is, that if the clerk does retire with the justices or is sent for by them, he should return to his place in court as soon as he is released by the justices, leaving them to complete their deliberations in his absence and to come back into court in their turn. I wish to add that the rulings which this court has given on the subject derive from and are really part of the rule so often emphasised, that justice must not only be done but must manifestly appear to be done, and if justices bear that in mind I feel sure that they will have no difficulty in loyally following the decisions of this court.

I should add that the rulings of this court do not apply to justices when exercising jurisdiction in matrimonial cases, as they are then subject to the directions and control of the Probate, Divorce and Admiralty Division.

Coroners' Courts

Inquests without a body

Until 1926 the body was an essential part of the inquest; indeed it was part of the process "*super visum corporis*" and was itself part of the evidence and it was once stated as a legal precept that the jury should examine the body for stab-wounds or other injuries.

As from January 1, 1927, the Home Secretary has had power, the Coroners (Amendment) Act, 1926, s. 18, to order a coroner to hold an inquest if a body is destroyed or irrecoverable, and this power is not infrequently exercised. It meets the case when, say, a bather is drowned and his body is not brought to land or when a person falls down an old mineshaft from which it cannot be recovered. But the Home Secretary is careful not to make an order under the section if there is already available some evidence of the body; thus when the body of a woman was destroyed in a fire but there remained the ashes at the place where she was known last to have been and also her wedding ring among them, no order was made, since there was something of the body available. In one instance, where a man was apparently drowned at the seaside, an inquest was ordered; after its completion, the body was washed ashore a few miles off where the local coroner simply issued an order for its burial and this was considered by all concerned the best way out of an unusual position.

It sometimes happens that a coroner is seised of a death but for some reason cannot or does not at once open and adjourn an inquest; if, in these circumstances, he issues a burial order and the body is interred without his having taken at least evidence of identification (or of finding the body, in some cases) difficulties may occur. Suppose that the coroner becomes ill or dies and the body is not available for view by the deputy or other coroner who may have to dispose of the case, no view by the coroner can be had and view is fundamental to an inquest. Until the operation of the Coroners Rules, 1953, this position was unnecessarily difficult, but it is now laid down that a burial order shall not be issued by a coroner unless he has held or is about to hold an inquest; though it is not stated in so many words, the issue of a burial order becomes part of the process of an inquest. This enables a simple solution to be found, since by section 14 of the Coroners (Amendment) Act, 1926, if an inquest is begun by one coroner but is not concluded and becomes a nullity so that another effective inquest comes to be held later, the coroner who holds such "subsequent inquest" does not have to view the body. Prior to this rule it had been suggested that the coroner holding the "subsequent inquest" would have to exhume the body for view or endeavour to obtain an order from the Home Secretary under section 18 on the basis that the body was "destroyed" (which it was not) "or irrecoverable" (which was also not the case). It will be understood that in the case of an inquest upon a body where cremation is desired, the inquest must be opened and medical evidence taken, and even then it is only in inquests into certain accidental deaths that cremation can take place before the completion of the inquest and the returning of the verdict.

Inquests under section 18 may avoid the somewhat laborious process of applying to the High Court to presume death.

During the recent war, provision was made for a coroner to hold an inquiry without a body if it were alleged that a person had been killed in an air raid or by other similar enemy action. The fact of the proposed inquiry was advertised and evidence called as to when the person was last seen and that he had not been again in touch with his friends or relatives. In some cases, there was no evidence at all of a body (except in its life) or of a cause of death (except by conjecture). None the less the system worked well provided the coroner was alert. In one instance in London, a coroner desired more time and adjourned for a few weeks; at his resumed inquest, he was able to call the supposed deceased who admitted that he had adopted the bomb incident as an opportunity to leave home.

Equally in inquests under section 18, care is necessary to find some evidence of the certainty of death; mere disappearance in the presence of circumstances of danger should not suffice. No jury is necessary by law in these inquests, unless the circumstances of the supposed death would have necessitated the presence of a jury had the body been available in the normal way. [W. Bentley Purchase, *Barrister-at-Law*, Coroner for the County of London.]

Case and Comment

Arson—*Identification—tracing of accused by police dog*

R. *v.* Webb[1] (Hertfordshire Quarter Sessions: Montague L. Berryman Q.C., Deputy Chairman: November 17, 1953).

On the night of October 23/24, 1953, near Watford, a straw stack was set alight and about 20 minutes later two other stacks in an adjoining farm about 440 yards away burst into flames. Evidence was given that a police dog picked up a positive scent near the first stack which led across various fields, along a road, and up a track to the second stack and thence across various fences into a shelter about 30 yards from the second stack and overlooking it. The accused was found in this shelter. When the dog entered the shelter he commenced to growl, and evidence was given by a trained handler that this was the indication that the dog had reached the person being tracked. A nearly full box of matches was found in the possession of the accused, who was a non-smoker, and the bottoms of his trousers were wet and his shoes muddy. The accused pleaded not guilty to charges of arson under section 17 of the Malicious Damage Act, 1861, but was found guilty by the jury and sentenced to three years' imprisonment. [Reported by Messrs. Penman, Johnson & Ewins, Solicitors, Watford.]

Commentary. Generally as to identification, see *Archbold* (32nd ed.) 347.

Carnal knowledge of girl under 16—*Accused under 23—reasonable belief—first occasion on which accused is charged*

R. *v.* Rider[2] (Essex Assizes: Streatfeild J.: November 18, 1953).

The accused, who was 18, was charged in one indictment in respect of two offences, each alleging that he had carnal knowledge with a girl under the age of 16. The first offence was alleged to have been committed on a day unknown between June 7 and 28, 1953, and he was seen by the police concerning that offence on July 26. In due course he received a summons, and on September 1 he appeared before the justices and was committed for trial. The second offence was alleged to have been committed on a day unknown between April 1 and July 31, and he was seen by the police concerning that offence in August. Later he received a summons, and on October 6 he appeared before the justices and was committed for trial. The accused sought to set up the statutory defence under section 2 of the Criminal Law Amendment Act, 1922, with regard to both counts in the indictment.

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[1] For the prosecution: *Harold Cassel* (instructed by Penman, Johnson & Ewins, Watford). For the accused: *J. Stuart-Smith* (instructed by Claude Barker & Partners, Watford).

[2] For the prosecution: *F. Lawton* ((instructed by D. Emrys Morgan). For the defendant: *Evelyn Russell* (instructed by D. Houghton & Son, Romford).

Held, that the first occasion on which the accused was charged was when he appeared before the court which had jurisdiction to determine the matter. As the magistrates had committed the accused for trial they were then sitting as examining magistrates, and so they were not then adjudicating on the matter and that was not the first occasion on which he was charged. If the magistrates had dismissed the case under the Magistrates' Courts Act, 1952, s. 7, they would then have been adjudicating and that would have been the first occasion on which he would have been charged. So when the accused appeared before the Assize Court he was being brought before the court for the first time.

As there were two counts in the indictment, on the face of it it would appear that the accused was being charged on two occasions, but in view of the decision in *R.* v. *Rogers* [1953] 1 Q.B. 311; 36 Cr.App.R. 203 that for the purposes of the Criminal Justice Act, 1948, ss. 21, 22, previous occasion means "a separate occasion at a separate assizes or quarter sessions" and also as section 2 of the Criminal Law Amendment Act, 1922, is a section which deals with the liberty of the subject the learned judge was inclined to interpret that section in favour of the accused. In those circumstances he ruled that the accused's presence before the court was "the first occasion on which he is charged" within section 2 of Act of 1922 and the statutory defence was applicable to both counts of the indictment. [Reported by Evelyn Russell Esq., *Barrister-at-Law.*]

COMMENTARY. Section 2 of the Act of 1922: "Reasonable cause to believe that a girl was of or above the age of sixteen years shall not be a defence to a charge [of carnal knowledge] . . . Provided that in the case of a man of twenty-three years of age or under the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence *on the first occasion on which he is charged* with an offence under this section.

See *Archbold* (32nd ed.) 1062–3.

Conspiracy—*Public mischief*

R. *v.* NEWLAND[3] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Havers JJ.: October 19, 1953) ([1953] 3 W.L.R. 826; [1953] 2 All E.R. 1067).

The appellants were charged with conspiring to effect a public mischief, by conspiring together by fraudulent means to obtain and by dishonest devices to distribute to the home market for eventual retail sale within the United Kingdom decorated domestic pottery which was not by reason of the Domestic Pottery (Manufacture and Supply) Order, 1947, or under any licence granted by the Board of Trade, available for sale for currency other than that of the United Kingdom. The pottery in question was obtained by some of the appellants, either from registered exporters or from manufacturers by means of false declarations that the goods were wanted for export and by false shipping marks. The goods went to firms who were parties to the fraud and were subsequently sold to retailers by means of bogus documents describing the goods as rejected or frustrated exports. When summing-up, the judge began by giving the jury a general outline of the case. He then dealt with the case against one appellant, charged the jury and they retired. On returning to court they announced their verdict and the judge then proceeded to deal with the next appellant and so on. The summing-up lasted five days and the jury were allowed to separate at the end of each day but in no case did they separate while considering a verdict. The appellants were convicted and appealed on two grounds: first, that the charge of conspiracy to effect a public mischief was a crime not known to the law and, as an alternative, that at least the particulars of the offence did not support a charge known to the law; secondly, that the judge was wrong in allowing the jury to separate during the summing-up.

Held, dismissing the appeals, (1) that it was too late to object that a conspiracy to effect a public mischief was an offence unknown to the law in view of the decisions in *R.* v. *Brailsford* ([1905] 2 K.B. 730) *R.* v. *Porter* ([1910] 1 K.B. 369; 3 Cr.App.R. 237) and *R.* v. *Bassey* ((1931) 22 Cr.App.R. 160; 47 T.L.R. 222). The court was well aware of the caution with which they should approach the consideration of an offence which was alleged to consist of doing acts which tended to effect public mischief as, if extended, it might enable judges to declare new offences which should be the business of the legislature; the court should approach the subject with the same degree of caution as had to be exercised when considering a plea in a civil action that something had been done contrary to public policy.

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[3] For the appellants: *F. Ashe Lincoln Q.C.*, *Kenneth Richardson* (instructed by Randolph and Dean, and Freeborough & Co.). For the Crown: *Eric Sachs Q.C.*, *Neville Faulks*, *David Hirst* (instructed by the Solicitor, Board of Trade).

(2) The court was in no way creating a new offence because the particulars sufficiently alleged the common law misdemeanour of conspiracy, and whether one looked at it simply as a conspiracy to effect an unlawful purpose or a conspiracy by dishonest devices to defeat the clear intention and purpose of an Act of Parliament or to work to the prejudice of the State, the particulars disclosed offences which had long been known to the common law of this country.

(3) The right approach to public mischief cases was to regard them as part of the law of conspiracy and to hold the actions of an individual not committed in combination with others, as indictable only if they constituted what had been held in the past to be common law or statutory offences; the safe course was no longer to follow *R.* v. *Manley* ([1933] 1 K.B. 529; 24 Cr.App.R. 25).

(4) There was no objection in law to the course that the judge took when summing up in allowing the jury to depart at night although the summing-up was concluded and a verdict taken against one while the case remained part heard against the others, since in no case did the jury separate during their retirement.

R. v. *Neal* ([1949] 2 K.B. 590; 33 Cr.App.R. 189) had no application to the present case. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. *R.* v. *Manley* has been strongly condemned by writers on criminal law and Lord Goddard, speaking at a meeting of the Society of Public Teachers of Law, said "Public mischief is fraught with public danger. Like public policy it is an unruly horse and should now be treated as incapable of developing new crimes." See the authorities collected and discussed in *Glanville Williams,* Criminal Law: The General Part (1953), § 133.

See *Archbold* (32nd ed.) 1239.

In *R.* v. *Neal* a verdict was quashed because the jury had been allowed to leave the court building in order that they might have luncheon together after the summing up had been concluded and they had been given in charge of the bailiff.

See *Archbold* (32nd ed.) 204 (and Supplement).

Contempt of Court — *Court-martial proceedings — comment before finding confirmed*

R. *v.* GUNN, *ex p.* ATTORNEY-GENERAL [4] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Sellers JJ.: November 13, 1953) (*The Times*, November 14, 1953).

Fusilier Lydon was brought before a court-martial on October 20, 1953, on a charge of cowardice. On October 21 he was found guilty and sentenced to one year's imprisonment and to be discharged with ignominy. The finding and sentence were subject to confirmation. On October 22 and several days following the *Daily Sketch and Graphic* printed various articles about the case, in one of which they said: "[The Army authorities] must realise that cowardice can no longer be treated as a simple crime." They also printed a photograph of the confirming officer, with his name and address. The Attorney-General having been granted leave to move on October 30, moved for a writ of attachment against G., the editor of the newspaper. His counsel submitted that the articles were calculated or designed to interfere with the confirming officer's decision and constituted a serious contempt of court.

Held, (1) that the matter complained of was not a contempt of this court in the strict sense, but the court had power to deal with it by a writ of attachment in order to prevent trial by newspaper. It was of the highest importance to the administration of justice that papers should not comment on a case while it was still *sub judice* and that was why the court would exercise its jurisdiction in the present case.

(2) The court's jurisdiction could be exercised in relation to courts-martial as well as other courts.

(3) The change of procedure in respect of the announcement of a court-martial's findings to some extent mitigated the respondent's offence, because it was only in recent years

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[4] For the applicant: *Sir Reginald Manningham-Buller Q.C., S.-G., J. P. Ashworth* (instructed by the Treasury Solicitor). For the respondent: *Sir Hartley Shawcross Q.C., Helenus Milmo* (instructed by Lewis & Lewis and Gisborne & Co.).

that an army court-martial announced its findings at the end of the hearing without waiting for them to be confirmed as previously.

(4) The object of the newspaper campaign was to bring pressure to bear on the confirming officer and to influence his decision. The court could not overlook so grave an offence, but regretted that only the editor had been brought before them and not the company. A fine of £500 would be imposed, failing payment of which, a writ of attachment would issue committing G. to prison for two months. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. See *Archbold* (32nd ed.) 1238–9.

Contempt of Court—*Prejudicing fair trial—alleged imputation during preliminary hearing by magistrates*

R. *v.* HARGREAVES, *ex p.* DILL [5] (Q.B., Divisional Court: Lord Goddard C.J., Croom-Johnson and Glyn-Jones JJ.: November 3, 1953) (*The Times*, November 4, 1953).

D. was charged with four other persons with conspiring to defraud the Bath Racecourse Co. Ltd., and proceedings for committal for trial had begun. The prosecution's case was that D. had conspired with the others to substitute a faster horse for one already entered in a race with the object of winning the prize money. A monthly magazine, *Lilliput*, had published an article under the heading " Crime. Making it Pay " which purported to be a biographical sketch of a Mr. Charlie Grove, the last paragraph of which read: " Some say Charlie and Dickie are also behind the other big coup which you don't need telling about—the one at Bath where the race was won by a ' ringer ' and the telephone wires were cut."

D., having been granted leave to move on October 20, 1953, moved for leave to issue a writ of attachment against H, the editor of *Lilliput*. His counsel submitted that the paragraph complained of was a contempt of court and might prejudice a fair trial since it took for granted that the race was won by a " ringer," which was the very matter that had to be considered at the trial.

Held, dismissing the motion, (1) that the paragraph in question would not interfere with the due course of justice or prejudice the defence. *R.* v. *Payne* ([1896] 1 at p. 580) referred to.

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[5] For the applicant: *John Elton* (instructed by Miss Marie L. Bundy). For the respondent: *Kenneth Diplock Q.C.* and *Desmond Fitzgerald* (instructed by Bulcraig and Davis).

(2) Such motions should only be made by the Law Officers.

[Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

Commentary. In *R.* v. *Payne, supra,* Lord Russell C.J. said: "No doubt the power which the court possesses . . . is a salutary power, and it ought to be exercised in cases where there is real contempt, but only where there are serious grounds for its exercise. Every libel on a person about to be tried is not necessarily a contempt of court; but the applicant must show that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending."

See *Archbold* (32nd ed.) 1238–9.

Evidence—*Hostile witness—evidence contrary to previous statement to the police*

R. *v.* James [6] (Cassels J.: Reading Assizes: October 2, 1953).

James was charged with having committed incest with his daughter now aged twenty-four. The daughter with whom the accused was alleged to have committed the offence was called as a witness for the prosecution. She had previously made a statement to the police incriminating the accused. On being examined in chief she denied that there had, as regards the present charge, been any sexual intercourse between the accused and herself. The prosecution sought thereupon leave to treat her as an adverse witness under section 3 of the Criminal Procedure Act, 1865 (Denman's Act). It was objected that the mere fact that she had changed her story was not sufficient for her to be treated as adverse.

Cassels J., having read the statement she had made to the police, allowed it to be put to her, and on her admitting that she had made it gave leave for the prosecution to cross-examine her upon it on the ground that although she showed no overt hostility she had shown herself to be adverse within the terms of the section by reason of her change of story. [Reported by R. V. Cusack, Esq., *Barrister-at-Law.*]

Commentary. Section 3 provides "A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement."

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[6] For the prosecution: *A. I. Kaufman* (instructed by the Director of Public Prosecutions). For the defendant: *R. V. Cusack* (instructed by Andrew Walsh, Lightfoot & Co., Oxford).

See *Archbold* (32nd ed.) 498–500.

Evidence—*Identity—tracing accused by police dog.* See **R.** *v.* **Webb, p. 49.**

Evidence—*Statements—admissibility—Judges' Rules*

R. *v.* Little, R. *v.* Wilson[7] (Courts-Martial Appeal Court: Lord Goddard C.J., Hilbery and Sellers JJ.: November 16, 1953).

In dismissing an appeal against conviction brought on the grounds, inter alia, that statements made by the appellants were inadmissible, having been made as a result of inducements, Lord Goddard C.J. said that a great deal of confusion would be avoided and groundless objections would cease to be taken with regard to the admission of statements if one tried to keep one thing clearly in mind. That was that any statement made by a person, whether an accused or not, was evidence against him, but in the case of an accused person the court would never accept a statement unless satisfied that it was voluntary, which meant that it had not been made as a result of a promise of benefit or reward or had not been extracted from the person making the statement by anything which could be called pressure or an order from a superior officer or a person having authority to make it.

The Judges' Rules were not rules of law; the court had had to hold that on more than one occasion. They were a code laid down for purposes of assisting the police and for the purposes of ensuring as far as one could that statements were not obtained by improper means. But if statements were made voluntarily it was open to the court to accept them, even though the Judges' Rules might not have been complied with in all strictness. If the Judges' Rules had not been complied with it was equally open to the court in its discretion to reject the evidence. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

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[7] For the appellants: *Brian Galpin* (instructed by Lewis Lloyd & Co.). For the Crown: *Henry Elam* (instructed by Director of Legal Services, Air Ministry).

COMMENTARY. The purpose of the Judges' Rules has been considered in a number of cases recently in which it has been stressed that they are intended for the guidance of the police. See *R.* v. *Wattam* (1952) 36 Cr.App.R. 72; *R.* v. *Straffen* [1952] 2 Q.B. 911; 36 Cr.App.R. 132; *R.* v. *Bass* [1953] 1 Q.B. 680; 37 Cr.App.R. 51.

See *Archbold* (32nd ed.) 394–6.

Juries—*Separation of.* See R. *v.* NEWLAND, p. 51.

Larceny — *Burglary* — *breaking* — *opening wide a window slightly open*

R. *v.* LACKEY [8] (Cassels J.: Gloucester Assizes: October 26, 1953).

The prisoner was indicted for attempted burglary. The prosecution's case was that he had attempted to enter the dwelling-house concerned through a window but had been interrupted before he had achieved his purpose. The evidence was that the window in question was a casement window constructed to open outwards. At the material time it had been left open by the householder to the extent of about one-quarter of an inch and had been secured in that position by means of the catch regulating the extent to which it could be opened. At the close of the prosecution's case it was submitted that on the evidence tendered the prisoner could not be convicted of attempted burglary, because even if he had achieved the purpose suggested there would have been no sufficient breaking to constitute the crime, the only suggestion being that he intended to open further a window which was already ajar.

CASSELS J. *held*, that the material point was that the window although ajar was secured in that position by the catch and could only be opened further by breaking that security. "If something is secured and that security is broken, that is a breaking." He accordingly ruled that in the circumstances it would have been a sufficient breaking if the prisoner had opened the window further, and he ruled that there was a case to go to the jury. [Reported by R. V. Cusack, Esq., *Barrister-at Law.*]

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[8] For the prosecution: *R. V. Cusack* (instructed by Guy H. Davis, Gloucester). For the defence: *James Irvine* (instructed by R. G. Holmes, Gloucester).

COMMENTARY. If a householder leaves his outer and inner doors and windows open a person who enters with intent to commit a felony is not guilty of burglary: 3 Co.Inst. 64. And according to the same authority the lifting of a latch or unloosing of any other fastening is a sufficient breaking.

See *Archbold* (32nd ed.) 650–2; *Stone* (85th ed.) 1462.

Larceny—*Movable hut—whether capable of being stolen*

BILLING *v.* PILL [9] (Q.B., Divisional Court: Lord Goddard C.J., Sellers and Havers JJ.: October 15, 1953) ([1953] 3 W.L.R. 758; [1953] 2 All E.R. 1061).

The War Office erected army huts on land which was used as a gun emplacement. In 1946 the army vacated the huts. In 1951 B, without lawful authority, dismantled a hut, which comprised seven sections resting on a concrete foundation, the floor of the hut being secured to the concrete base by bolts let into the concrete. Without abandoning possession B re-erected the hut on his own land. B was charged under section 2 of the Larceny Act, 1916, with stealing the hut, the property of the War Office. The justices were of the opinion that the hut was a movable building which did not form part of the realty and was capable of being stolen within the provisions of section 2 and they convicted B. B appealed on the ground that the hut was attached to or formed part of the realty and that since after severance he had not abandoned possession, the proviso to section 1 (3) applied and the hut was not capable of being stolen.

Held, dismissing the appeal, (1) that the proviso to s. 1 (3) was intended to preserve the old common law position that one could not be charged with stealing real property. It meant that where a thing adhered to the realty a person who severed it (subject to certain exceptions not relevant to the present case), could not be convicted of larceny unless after severance he left the things on the land, so that it reverted to the possession of the owner of the land, and subsequently returned to take it. The case depended on the meaning of the words " attached to or forming part of the realty " which could be read as meaning " attached so as to form part."

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[9] For the appellant: *W. M. Huntley* (instructed by Reed & Reed agents for Caunter, Venning & Harward, Liskeard). For the respondent: *Malcolm Wright* (instructed by Jaques & Co. agents for Stephens & Scown, St. Austell).

(2) The question was whether the hut was so attached to the land as to become part of it or whether it was a temporary fixture not intended to be part of the land: the hut was erected for a temporary purpose and did not become part of the land simply because some bolts had been put through the floor to stabilise it. [Reported by Miss C. J. ELLIS, *Barrister-at-Law.*]

COMMENTARY. See *Archbold* (32nd ed.) 548.

Lottery—*Dance—prizes offered in " lucky spot " dance*

R. *v.* TAYLOR [10] (Birmingham Magistrates' Court: Mr. J. F. Milward, Stipendiary Magistrate: November 5, 1953).

The defendant was the manager of a ballroom. " Lucky Spot " waltzes had been held regularly on Wednesday nights at the ballroom since August, 1952, and were regularly advertised by newspaper and poster. £5 each in cash was paid to the winning couple who were selected by what was admittedly chance. A blindfolded dancer was directed orally by the manager with his back to the floor so many steps here and there and the nearest couple won. On September 23, £20 was so given. No extra charge was made for a chance on the floor, no separate tickets were issued and the opportunity was incidental to the main entertainment. There was no evidence called directly to show that the defendant or the ballroom derived any advantage from the " Spot " Waltz. The defendant was charged, in substance, with (i) advertising for sale chances in a lottery, (ii) selling such chances, (iii) using the premises for the conduct of such a lottery, all offences being contrary to section 22 of the Betting and Lotteries Act, 1934. For the defendant it was contended, relying on a dictum of Darling J. in *Willis* v. *Young and Stembridge* [1907] 1 K.B. 448 at p. 455, that only two of the elements of a lottery were present in this case. There was a distribution of prizes and such distribution was governed by chance but the third element, something paid by the participant, was absent.

The magistrate found the charges proved and imposed a fine of £2 on each information. [Reported by R. M. A. Braine, Esq., *Barrister-at-Law.*]

COMMENTARY. The dictum of Darling J. relied on on behalf of the defendant was " I am not prepared to hold that an absolutely free and gratuitous distribution of chances, none of which have been paid for, would be a lottery."

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[10] For the prosecution: Mr. R. M. Dunstan, Solicitor. For the defendant: *Colin Coley* (instructed by Charles C. Ladds, Birmingham).

See *Stone* (85th ed.) 1492 *et seq.*

Manslaughter—*Direction to jury—reduction from murder*

R. *v.* RYMELL [11] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: November 23, 1953) (*The Times*, November 24, 1953).

R. was convicted of the murder of his son, aged two, and sentenced to death. He appealed on the ground that Oliver J. had misdirected the jury by not putting to them that this was a case in which manslaughter should be considered. R. had recently been left a widower with four small children. When he called for his son, whom he had left with a neighbour during the day, he was to some extent under the influence of drink. When he got home it appeared that being maddened by the child's screaming he had struck him in a brutal manner on the face. The child's death however was caused by a ruptured liver, but how it took place was unexplained although the medical evidence was that it was caused through some physical violence. It was said that it might have resulted from a kick but there was no bruise to suggest it. It could have been caused by a fall from the bed with a violent landing on the buttocks or by coming into violent contact with the bedpost. The child had in fact fallen from the bed.

Held, (1) that no one suggested that R. intended to kill the child but if he had been guilty of acts likely, in the reasonable man's mind, to cause grievous bodily harm he would be guilty of murder.

(2) The trial judge had told the jury that they must be satisfied that R. caused the rupture, but he did not tell them that they must come to a conclusion how the liver was ruptured and if it was caused by a fall, and whether a reasonable man would not have anticipated that hitting the child's face would have led to his falling from the bed in such a manner as to rupture his liver.

(3) The defence that he was drunk could not be supported because he knew what he was doing and made a detailed statement to the police; there was no evidence on which the jury could find that he was incapable of forming an intent.

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[11] For the appellant: *E. L. Mallalieu Q.C., R. P. Smith* (instructed by Registrar, Court of Criminal Appeal). For the Crown: *G. De P. Veale Q.C., Denis Robson* (instructed by Director of Public Prosecutions).

(4) Although a verdict of murder could have been found, the law relating to manslaughter had not been sufficiently explained to the jury and in order to prevent any possible miscarriage of justice the court would alter the conviction to one of manslaughter and sentence R. to seven years' imprisonment. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. A direct authority for the first proposition in the judgment is to be found in *R.* v. *Lumley* (1911) 22 Cox C.C. 635, where it was held that a man is guilty of murder if as a reasonable man he must have contemplated that death or grievous bodily harm would result from his act. If the act is an unlawful one not amounting to felony the offence, generally speaking, is manslaughter: *R.* v. *Hodgson* (1730) 1 Leach 6.

See *Archbold* (32nd ed.) 910–3.

Murder—*Queen's peace—murder of alien abroad—trial by Court-Martial*

R. *v.* PAGE [12] (Courts-Martial Appeal Court: Lord Goddard C.J., Havers and Glyn-Jones JJ.: November 10, 1953) ([1953] 3 W.L.R. 895; [1953] 2 All E.R. 1355).

P., an acting-corporal in the Royal Corps of Signals, was convicted of the murder of an Egyptian national in an Egyptian village by a court-martial held in the Suez Canal Zone. P. appealed on the ground that his conviction could not stand because the murdered man was not within the Queen's peace.

Held, dismissing the appeal, that section 41 of the Army Act meant that a court-martial could (subject to the provisions relating to trial before a civil court in certain cases) try a person subject to military law for any offence wherever committed which would be an offence against the law of England, and as by section 9 of the Offences against the Person Act, 1861, murder by a subject of Her Majesty of a foreigner abroad would be dealt with as if committed in England, P.'s conviction was valid. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. The court also commented on chapter 6 of the Manual of Military Law, pp. 131–2 of the 1951 edition. It is there stated that it must be proved in the case of murder that the victim was under the Queen's peace and that the army carries the Queen's peace with it wherever it goes. So far as this may appear to assert that an alien who is not at the time of the crime within Her Majesty's dominions or territories is within her peace the court could not assent to it, at least unless the territory has been effectively occupied by her forces.

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[12] For the appellant: *Kenneth Diplock Q.C.*, *J. M. Buckland* (instructed by the Registrar, Courts-Martial Appeal Court). For the Crown: *Sir Reginald Manningham-Buller Q.C.*, *S.-G.*, *E. Garth Moore* (instructed by Director, Army Legal Service).

Public Mischief—*Conspiracy*. See R. *v.* NEWLAND, p. 51.

Road Traffic—*Drunk in charge of a vehicle—fresh evidence*

R. *v.* RIGBY [13] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: November 23, 1953).

R., a doctor, was found by police officers sitting asleep in his motor-car, which was drawn up at the side of the road. He was very abusive when roused and the police officers thought that he was drunk. He was charged with being drunk in charge of a motor-car. He had been drinking earlier but his defence was that he was not drunk but ill. He had had three fractures of his skull. R. applied for leave to call further evidence and to appeal against sentence. R.'s counsel submitted that R. was not fully examined medically before the trial and, although the medical witness, who had carried out the tests after R. was released on bail and whose evidence it was sought to admit, had advised R. to apply for an adjournment, he had wanted the matter dealt with at once. On the question of sentence, R. had had no trouble with the police, had never been involved in an accident, and had never made any claims on his car insurance policy.

Held, dismissing the applications, (1) that if the court were to give leave to admit the fresh evidence they would be departing from every rule that the court had laid down, and they would not know where to draw the line: the fact that R. had elected to continue the trial and did not apply for a postponement was conclusive in refusing to admit the fresh evidence, and refusing leave to appeal against conviction out of time.

(2) Regarding the sentence, that as R. was found senseless in a car which was stationary at the side of the road, without a rear light, which was a frequent cause of accidents at night, the court could not say that a sentence of three months' imprisonment was wrong in principle. [Reported by Miss C. J. Ellis, *Barrister-at-Law*.]

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[13] For the applicant: *Tristam Beresford Q.C.*, *Gilbert Rountree* (instructed by Garland-Wells & Co.). The Crown was not represented.

COMMENTARY. The power of the Court of Criminal Appeal to admit fresh evidence is contained in section 9 of the Criminal Appeal Act, 1907, under which the evidence may be admitted "if [the court] think it necessary or expedient in the interest of justice." Section 9 applies the provisions of R.S.C., Ord. 58, r. 4 which contains the power of the Court of Appeal to admit fresh evidence: see *R.* v. *Robinson* [1917] 2 K.B. 108; 12 Cr.App.R. 226. This power was recently considered in *Ali* v. *Ellmore* [1953] 1 W.L.R. 1300; [1953] 2 All E.R. 1044, which applied the decision in *Braddock* v. *Tillotson's Newspapers* [1950] 1 K.B. 47; [1949] 2 All E.R. 306.

See *Archbold* (32nd ed.) 309–11.

Sentence — *Borstal* — *effect of recommendation of prison commissioners*

R. *v.* Cox [14] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: November 23, 1953).

The appellant was seventeen years of age and had a good home and was earning a good wage. He became a member of a gang who had been making a nuisance of themselves and pleaded guilty at Exeter Quarter Sessions to three counts of house breaking and office breaking and asked for five other offences to be taken into consideration. His employer reported favourably upon him and the prison commissioners described him as impressionable and a fit subject for reformation and were of the opinion that he was not suited for Borstal at that stage. He received a sentence of Borstal training against which he appealed on the ground that in all the circumstances, he should not have been sent to Borstal.

Held, that although as a general rule it was not desirable to send a person to Borstal when the prison commissioners had recommended against it, it must be remembered that the Criminal Justice Act, 1948, provided that young persons should not be sent to prison unless the court considered that there was no other way of dealing with them, and but for that Act it might have been a case for a short term of imprisonment. The recorder, having heard the report of the probation officer, had sentenced the appellant to Borstal; offenders such as he could not always be let off, and the only way of dealing with him was to send him to Borstal. Accordingly the appeal must be dismissed. [Reported by Miss J. Lamb, *Barrister-at-Law.*]

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[14] For the appellant: *H. A. Hobbs* (instructed by McLusky & Braddell, Exeter).

COMMENTARY. *R.* v. *Tarbolton*, 28 Cr.App.R. 92; [1942] 1 All E.R. 198 was decided before the coming into force of the Criminal Justice Act, 1948, and Lord Goddard C.J. observed that it did not lay down as a mandatory matter of law that persons whom the prison commissioners reported to be unsuitable should not be sent to Borstal.

See *Archbold* (32nd ed.) 234–6.

Sentence — *Corrective training — following on sentence of imprisonment*

R. *v.* CANNELL [15] (Court of Criminal Appeal: Lord Goddard C.J., Croom-Johnson and Glyn-Jones JJ.: November 2, 1953).

C. pleaded guilty to two charges of housebreaking and larceny. Four other cases were taken into consideration and the recorder passed a sentence of three years' corrective training to follow a sentence of two years' imprisonment which C. was then serving. The court which sentenced him to imprisonment had heard of the other cases but for some unknown reason had refused to take them into consideration. The recorder had ordered the sentence of corrective training to start when the sentence of imprisonment had been completed. C. applied for leave to appeal against sentence. The court treating the application as the hearing of the appeal,

Held, (1) that a court could order a sentence of corrective training or preventive detention to follow a sentence of imprisonment already being served, and the longer sentence would merge in the shorter one.

(2) The sentence in the present case would have been a five years' sentence, but the court thought it would be better to substitute for the three years' corrective training to commence at the end of the imprisonment, a sentence of four years' corrective training to date from the first conviction. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. The question of what sentence should be passed on a person already serving a sentence at the time of his trial has raised several problems in connection with corrective training. It was held in *R.* v. *Talbot* [1953] 1 Q.B. 613; 37 Cr.App.R. 23 that imprisonment should not be made to follow corrective training, but in *R.* v. *Wilsher* 37 Cr.App.R. 110; [1953] 1 W.L.R. 844 it was stated that where a person commits an offence while out on licence from corrective training imprisonment is the right sentence. Now it has been decided that corrective training may be given to follow an existing sentence of imprisonment, the result in that case being that the latter would be merged in the former.

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[15] The applicant did not appear and was not represented.

See *Archbold* (32nd ed.) 219–20, 1494.

Sentence—*Fine substituted for imprisonment*

R. *v.* MORRIS [16] (London Sessions Appeal Committee: November 26, 1953) (*The Times*, November 27, 1953).

M. was convicted by a magistrate at Lambeth of stealing four golf balls valued at 5s., and sentenced to one month's imprisonment. He appealed against conviction and sentence. M. said that he had signed the visitors' book at a golf club, of which he was not a member. He only intended to borrow the balls, but when he saw the attendant he panicked. He returned the balls by post the same day. The London Sessions Appeals Committee dismissed the appeal against conviction but altered the sentence to a fine of £10. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. This case should be compared with *R.* v. *Markwick* (1953) 37 Cr.App.R. 125 where a member of a golf club was convicted of stealing 2s. 6d. from a fellow-member and was fined £500. The Court of Criminal Appeal considered a fine inappropriate and substituted a sentence of two months' imprisonment.

Sentence—*Imprisonment—gross indecency with boys*

R. *v.* WILSON [17] (Court of Criminal Appeal: Lord Goddard C.J., Havers and Glyn-Jones JJ.: November 10, 1953).

The appellant was sentenced to six years' imprisonment on six charges of gross indecency with boys. The appellant had had several previous convictions for indecency but this was the first time that he had ever been convicted of indecency with males. Although the court did not want to be thought that they did not take a grave view of cases where there was an element of corruption they had decided, after some hesitation, that in the circumstances they would halve the sentence. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

Sentence—*Imprisonment—drunk in charge of a car.* See R. *v.* RIGBY, p. 62.

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[16] For appellant: *Neville Vincent* (instructed by Good, Good & Co.). For the police: *R. E. Seaton* (instructed by the Solicitor to the Metropolitan Police).

[17] The applicant did not appear and was not represented.

Sentence—*Preventive detention—length of sentence*

R. *v.* LOVE[18] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Sellers JJ.: November 16, 1953).

L., aged 46, pleaded guilty to two charges of housebreaking and asked for 22 other offences to be taken into consideration. He had 20 previous convictions. L. was sentenced to eight years' preventive detention and applied for leave to appeal against sentence.

LORD GODDARD C.J., dismissing the application, said that one could not imagine a case involving a more hopeless type of criminal or one that preventive detention was more designed to cover. Quarter sessions had got into their minds that wherever they imposed a sentence of preventive detention it should be for eight years. The court had said that that should be the minimum sentence, and except in the case of an old man, the sentence should not be less than eight years. In the present case the court had seriously considered giving leave to appeal with a view to increasing the sentence; anything up to twelve years would not have been wrong. [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. The Court of Criminal Appeal has laid it down that the minimum sentence of five years' preventive detention specified in the Criminal Justice Act, 1948, s. 21 (2) is inappropriate except in the case of elderly or sick offenders who might otherwise spend their last days in prison. In other cases seven years should be regarded as the irreducible minimum and the period should generally be eight years or longer: see *R.* v. *Sedgwick* (1950) 34 Cr.App.R. 156; 1 C.L.C. 2341; *R.* v. *Hewitt* (1950) 34 Cr.App.R. 163; 1 C.L.C. 2342. Eight years should not be regarded as a maximum: *R.* v. *Churchill* [1952] 2 Q.B. 637; 36 Cr.App.R. 107.

See *Archbold* (32nd ed.) 1494–5.

Sentence—*Preventive detention—when appropriate*

R. *v.* POWELL[19] (Court of Criminal Appeal: Lord Goddard C.J., Havers and Glyn-Jones JJ.: October 28, 1953) ([1953] 1 W.L.R. 1351; [1953] 2 All E.R. 1202).

P., aged 38, with five previous convictions, pleaded guilty at quarter sessions to larceny and carrying an offensive weapon contrary to section 1 of the Prevention of Crime Act, 1953. He was sentenced to five years' imprisonment on the former charge and two months' on the latter, to run concurrently. The deputy-chairman said that he would have sentenced P. to preventive detention but for the decisions of the Court of Criminal Appeal, which he thought prevented him. P. applied for leave to appeal against sentence on the ground that the deputy-chairman who sentenced him was also the chairman of the examining magistrates who committed him for trial.

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[18] The applicant did not appear and was not represented.

[19] The applicant did not appear and was not represented.

Held, dismissing the application, (1) that there was no reason in law why the chairman of committing magistrates who happened to be the chairman or deputy-chairman of quarter sessions should not sit at the trial, although it was not altogether desirable. As a general rule it should be arranged that where a man had been committed for trial by a bench on which the chairman or deputy-chairman was sitting, the trial should take place in a court where he was not sitting. See also p. 43.

(2) The case was a proper one for a sentence of preventive detention: the court had said that the sentence should be confined to habitual criminals but the deputy-chairman seemed to think that unless the prisoner could have been convicted under the Prevention of Crime Act, 1908, as an habitual criminal the sentence should not be passed. What the court had meant was that the mere fact that a man over 30 years of age had three previous convictions should not *ipso facto* render him liable for preventive detention. "Preventive detention ought to be kept for men who have shown by their conduct and previous history that they cannot be trusted to abstain from crime." [Reported by Miss C. J. Ellis, *Barrister-at-Law.*]

COMMENTARY. The case which quarter sessions did not interpret correctly was *R.* v. *Askew* [1949] 2 All E.R. 687; 1 C.L.C. 2339 where eighteen months' imprisonment was substituted for a sentence of preventive detention in the case of a man who had had eight previous convictions but between the present and the last previous sentence had had a clean record for nine years. In *R.* v. *Gardner* (1952) *Times,* November 25, the Court of Criminal Appeal said that it was not necessary to give preventive detention every time it was brought to the notice of the court that the prisoner had had three previous convictions.

See *Archbold* (32nd ed.) 1494–5.

Summing-up — *Separation of jury.* See R. *v.* NEWLAND, p. 51.

Acts and Orders

Aliens

Aliens Order, 1953 (S.I. No. 1671): operative April 1, 1954.

The landing or embarking in the United Kingdom of aliens is now governed by this Order, which revokes and replaces the Aliens Order, 1920, and subsequent amending Orders. Offences and proceedings are dealt with in articles 25 to 27. Power to arrest without warrant except in certain circumstances are contained in article 28.

Armed Forces

Auxiliary Forces Act, 1953 (2 & 3 Eliz. 2, c. 50).

This Act consolidates with small amendments the Territorial and Reserve Forces Act, 1907 and later Acts and Orders in Council providing for the Territorial Army and Auxiliary Air Force.

The offences which may be committed, the procedure for dealing with them and ancillary matters are dealt with in sections 27–34. A man who fails to attend on embodiment or on calling-out for home defence service is guilty, according to the circumstances, of desertion or absence without leave, punishable under the Army Act or Air Force Act, whilst incitement to commit the offence and concealment are offences punishable on summary conviction, with a fine or imprisonment (section 27 (1) (2)). Continuing to employ a deserter amounts to aid in concealing him which is punishable (section 27 (4)). Under section 27 (3) deserters and absentees without leave may now be arrested by the civil authorities and brought before a magistrate.

Failure, without leave or reasonable excuse to fulfil training conditions is an offence punishable, on summary conviction, with a fine (section 28). The sale, pawn, wrongful destruction or damage or negligent loss of public property is an offence punishable, on summary conviction, with a fine; the value of the property is recoverable from the offender on complaint to a magistrates' court (section 29). Enlistment after discharge with disgrace from the navy, army or air force or contrary to rules is an offence punishable by court-martial (section 30).

Section 31 provides for the trial of offences and the application of penalties, certain offences which have been tried by court-martial may also be tried by a magistrates' court. Provision is made for the recovery of fines; section 27 of the Justices of the Peace Act, 1949, may be applied (section 31 (5)). Proceedings should be commenced within two months of the commission of an offence or the apprehension of the offender, whichever is later (section 31 (6)). Courts of inquiry into illegal absence from duty may be held (section 32). Provision is made concerning the trial of offences triable both by court-martial and summarily (section 33). Evidence and the proof of civil convictions or acquittals are governed by sections 163 and 164 respectively of the Army Act and Air Force Act (section 34).

Officers and men of the two forces are, as a rule, exempt from jury service and service as peace or parish officers (section 39 (3)).

Constables and parish officers must conform to the orders and regulations with respect to the publication and service of notices under the Act; default is punishable, on summary conviction, with a fine (section 41).

The Act came into force on January 1, 1954.

Polish Forces (Penal Arrangements) (Revocation) Order, 1953 (S.I. No. 1676): operative November 19, 1953.

The provisions for the detention or imprisonment of members of certain Polish Forces in prisons in the United Kingdom have been revoked.

Customs and Excise

Mechanical Lighter Regulations, 1953 (S.I. No. 1576): operative January 1, 1954.

The conditions to be observed by manufacturers of mechanical lighters for the purposes of Revenue control are set out in these regulations, which revoke and substantially reproduce regulations made in 1928 and 1934. For penalties see section 221 (3) of the Customs and Excise Act, 1952.

Dangerous Drugs

Dangerous Drugs Act, 1951 (Application) (No. 2) Order, 1953 (S.I. No. 1680): operative December 14, 1953.

The salts of N-allylnormorphine and any preparation, admixture, extract or other substance containing any proportion of the drug are added to the drugs to which Part III of the Dangerous Drugs Act, 1951, applies.

See *Archbold* (32nd ed.), Supplement, 1195–1209; *Stone* (85th ed.), 714.

Defence Regulations

DEFENCE REGULATIONS ORDERS, 1953: No. 10 (S.I. No. 1567); No. 11 (S.I. No. 1568); No. 12 (S.I. No. 1664); No. 13 (S.I. No. 1665); No. 14 (S.I. No. 1666); No. 15 (S.I. No. 1766); Nos. 10 and 11 operative on November 1, 1953; Nos. 12 to 14 operative on November 22, 1953; No. 15 operative on December 10, 1953.

The following regulations of the Defence (General) Regulations, 1939, have been amended or revoked:

2BA revoked, see *post*, p. 71.

54B (1) (*d*) (transport services and highways) revoked.

55 (1D), (1E) (general control of industry) revoked.

55AB (3), (4), parts of (8) (price control of goods and services) revoked.

56A (6A) to (6E) (control of building operations) revoked.

56AB (control of building and civil engineering contracting) revoked.

58A (1), (1A), (2), (3), (3A) (control of employment) revoked.

60CAA (relaxation of provisions relating to food preservatives and condensed milk) revoked.

60J (salvage of chattels from war-damaged premises) revoked.

62 (6) (7) (control of cultivation and termination of agricultural tenancies) amended.

70 (1) (*a*) (*c*) (*d*), (1C), (2) (traffic on highways) revoked.

72 (1), (2) (modification of enactments relating to road vehicles and drivers thereof) amended.

80B (medical examinations and interviews) revoked.

90 (attempts to commit offences and assisting offenders) revoked.

93 (2) (time limit for commencement of proceedings) revoked.

100 (definitions) amended.

Sched. 3 (definitions) amended.

The following regulations of the Defence (Finance) Regulations, 1939, have been revoked:

9 (3), (4), (5) (application of provisions of the Defence (General) Regulations, 1939).

9B (2) (restriction on agreements).

SUPPLIES AND SERVICES (CONTINUANCE) ORDER, 1953 (S.I. No. 1767), operative December 6, 1953; EMERGENCY LAWS (CONTINUANCE) ORDER, 1953 (S.I. No. 1768); CONTINUANCE OF EMERGENCY LEGISLATION (Cmd. 8990).

The Defence Regulations set out in the White Paper (Cmd. 8990) have been continued in force for a further year until December 10, 1954.

Explosives

CONTROL OF EXPLOSIVES ORDER, 1953 (S.I. No. 1598): operative November 30, 1953.

A person shall not, subject to certain exceptions, acquire gunpowder or safety-fuze unless licensed so to do by a chief officer of police. Records are to be kept of the acquisitions and transfers of these and certain other explosives. The provisions of Defence Regulation 2BA are revoked on the coming into operation of this Order. For penalties see section 3 of the Emergency Laws (Miscellaneous Provisions) Act, 1953.

Road Traffic

ROAD VEHICLES LIGHTING (REVERSING LIGHTS) REGULATIONS, 1953 (S.I. No. 1546): operative November 1, 1953.

The conditions to be complied with by white reversing lights on vehicles are prescribed. For penalties for failure to comply with the regulations, see section 10 of the Road Transport Lighting Act, 1927.

Books and Periodicals

Books Received:

Criminal Law. The General Part. By Glanville L. Williams LL.D. London: Stevens & Sons, Ltd. 1953. xliv and 719 and (index) 16 pp. (£3 3s. net.)

English Law and the Moral Law. By A. L. Goodhart K.B.E., Q.C. London: Stevens & Sons, Ltd. 1953. x and 151 pp. (no index). (12s. 6d. net.)

The Queen's Peace. By Sir Carleton Kemp Allen Q.C. London: Stevens & Sons, Ltd. 1953. xi and 183 and (index) 8 pp. (12s. 6d. net.)

Articles:

Solicitors' Journal, Vol. 97.
  The Magistrates' Courts Act, 1952, p. 771.
  Clerk retiring with justices, p. 822.

Law Journal, Vol. 103.
  Royal Commission on Capital Punishment, p. 713.
  Dogs (Protection of Livestock) Act, 1953, p. 763.

Law Times, Vol. 216.
  Continuance of Emergency Legislation, pp. 576, 613.

Justices of the Peace, Vol. 117.
  Proceedings in Warwickshire Quarter Sessions, 1682–1690, pp. 716, 734.
  Degrees of murder, p. 750.
  The meaning of probation, p. 751.
  Careless and dangerous driving, p. 766.
  Supervision and probation orders—juvenile attaining the age of seventeen, p. 768.
  "In Charge" while under the influence: the immobilised car, p. 783.
  The Great Unpaid, p. 788.

THE

CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Quarter Sessions

In response to the suggestion of a subscriber we include in the Calendar the dates so far received of quarter sessions' sittings during February and March.

Attendance of witnesses at magistrates' courts

Concern has been expressed at the amount of time spent by witnesses attending summary trials of minor offences, especially the time spent by the police who have to give evidence on the trial of minor motoring offences. The Home Secretary did not consider acceptable the idea that police reports should be admitted as evidence without the attendance of the police constable. He is trying to evolve a system by which it could be found out in advance whether the defendant intended to appear or whether he intended to plead guilty so that the attendance of at least a few witnesses could be avoided.

A working party has been considering the matter and those of their suggestions which do not require legislation are to be circulated for the consideration of magistrates' courts.[1]

The practice of adjourning trials and preliminary hearings after a very short hearing with the consequent waste of time of counsel, solicitors and witnesses also deserves consideration.

Evidence by mechanical aid

The Home Secretary has again been questioned about the use of tape-recording machines in the taking of statements by the police. In his answer he referred to the difficulty of proving that a voice heard on a recording machine was the voice of the person in custody. Moreover a recording might have been obtained under duress or by threats or inducements applied beforehand and so could be objected to in the same way as a written statement.[2]

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[1] H.C. Debates, Vol. 521, col. 2156 *et seq.*, December 10, 1953.

Other objections are referred to in the article on page 96.

Police recruitment and pay

The fall in the strength of the police force during 1953 is giving cause for some anxiety. The Home Secretary considers, however, that with the improvement in conditions of employment since the war, the force now offers an excellent career for young men. He regards as particularly important the establishment of the Police Council of Great Britain, which provides machinery for negotiation concerning conditions of service.[3]

The Home Secretary has approved proposals of the Police Council for increases in the pay of the lower ranks of the force and is considering increases in the pay of other ranks. The proposals were that constables should receive an increase of £45 a year, sergeants £50, and inspectors and chief inspectors £55. This means that constables will receive from £445 to £550 a year, sergeants £590 to £635, provincial and Scottish inspectors £700 to £745 and provincial and Scottish chief inspectors £790 to £830. Women police will receive 90 per cent. of these increases. The London allowance for constables and sergeants will be raised from £10 to £20 a year. An attractive booklet entitled " Your Career—Life in the Police " has been issued by the Home Office.

Juvenile courts

The statutory rules governing the constitution of juvenile courts are to be amended so that these courts will contain at least one man and at least one woman. All cases will then be heard by a mixed court, unless an emergency arises. Women justices are to be appointed to those juvenile court panels which have not an adequate number, and it is intended that the new rules should come into force in 1955.[4]

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[2] H.C. Debates, Vol. 521, col. 2158, December 10, 1953.

[3] H.C. Debates, Vol. 521, col. 2161, December 10, 1953.

[4] H C. Debates, Vol. 522, col. 76, December 16, 1953; H.L. Debates, Vol. 185, col: 132, December 16, 1953.

Overloaded vehicles

It is as well that the decision in *Houghton* v. *Trafalgar Insurance Co.* ([1953] 3 W.L.R. 985) went the way it did. It was there decided that a clause in an insurance policy exempting the insurers from liability for damage when the car was carrying a load in excess of that for which it was constructed did not apply when a five-seater car was involved in an accident whilst carrying six people. If such a clause had the effect claimed for it anyone carrying an extra passenger in his car would risk contravening section 35 of the Road Traffic Act, 1930, by using the car when not effectively covered by a third-party insurance.

Enforcement of affiliation orders

Immunity from the processes of enforcement of affiliation orders enjoyed by American servicemen in this country is the same as that conferred on British soldiers by the Army Act, s. 144. It has been suggested that the Visiting Forces Act, 1952, should not be brought into force until it had been amended so as to provide machinery for the enforcement of such orders against American servicemen. This suggestion was not accepted by the Home Secretary. Consultation is now taking place on this matter between him and the American authorities and he hopes to be able to announce the outcome of these discussions before the Act of 1952 is brought into force.[5]

Added interest is given to this point by the case of *R.* v. *Birkenhead Borough Justices, ex p. Smith*, of which a report may be found on p. 133.

United States Courts-Martial

Members of the English Bar appearing before United States Courts Martial in this country should not wear robes. This direction has been issued by the General Council of the Bar at the request of the Staff Judge Advocate at Headquarters, U.S. Third Air Force, who has pointed out that it is not the custom for advocates to appear robed before United States Courts.

Defence Regulations

A new edition, the twenty-first, of the Defence Regulations has now been published (H.M.S.O. 3s. 6d.). This edition, which runs to 88 pages instead of the 156 pages of the last edition, shows the regulations in force on December 27, 1953, and therefore takes account of all the alterations referred to at [1954] Crim.L.R. 70.

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[5] H.C. Debates, Vol. 521, col. 1622, December 7, 1953; col. 2174, December 10, 1953.

The Clapham Common murder

The arguments in the appeal by Michael John Davies against his conviction for murder committed during a gang fight on Clapham Common occupied the time of the House of Lords for four days. At their conclusion the House took less than a quarter of an hour to come to a unanimous decision to dismiss the appeal. The case involved an elaborate examination of the rules governing the reception of the evidence of an accomplice or of a person who might be considered to be an accomplice. The case will be dealt with in the next issue of this Review when the opinions of the House are available for consideration.

Jury discretion at murder trials

Viscount Simon in the House of Lords moved a resolution of dissent in respect of the recommendation of the Royal Commission on Capital Punishment that the jury which has convicted a person of murder should answer questions which may determine his punishment.[6] The scheme suggested by the Commission to reduce the number of capital sentences was that the jury, having decided that an accused was guilty of murder, should then carry out a second trial to find if there were any extenuating circumstances which would justify a sentence of imprisonment instead of the death sentence. In this task they would have no statutory definition of " extenuating circumstances " and they would in no sense be governed by principles of law.

Both Viscount Simon and Lord Asquith of Bishopstone regretted that the membership of the Commission did not include anybody who had ever tried a case involving a capital charge.

In company with other speakers Lord Simon did not, like the Commission, wish to see the law of murder made more flexible. He thought that the automatic passing of the death sentence upon a person found guilty of murder was a necessary mark put by the community upon the murder: the fact that in some cases a reprieve was granted did not lessen its value or reduce it to a farce. The Commission had felt that they could not leave the task of deciding the sentence to the judges, evidently because the judges did not want it, so that the task had to be given to the jury.

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[6] H.L. Debates, Vol. 185, col. 137 *et seq.*, December 16, 1953,

Lord Simon expressed horror at sentences of life imprisonment; he pointed to the difficulties of deciding what are extenuating circumstances and he referred to the matters which are considered by the Home Secretary but which could only be incompletely considered by the jury. He visualised the second trial and showed how emotionalism would arise and obscure the truth. Finally the jury would lack the standards which the Home Secretary has had built up and this would lead to differing results on similar facts.

That the disparity between decisions would bring the law into disrepute was the view of Earl Jowett and he was supported by Lord Asquith of Bishopstone who said: "Justice should be even-handed and should not consist in a capricious patchwork." Lord Asquith considered that there would be a great increase in sentimental clemency.

Viscount Templewood admitted the objections to the scheme but said that experience overseas showed that juries did not give emotional verdicts and there was less disparity than might be imagined. He suggested that for a trial period of five years either the judges or juries should have the power to consider extenuating circumstances.

Viscount Waverley did not favour the suggestion that the jury, whose proper function is to determine issues of fact, should be given the power to exercise judgment.

Lord Chorley, supporting the Commission's proposals, said that life sentences of imprisonment averaged ten years and that the persons released had, on the whole, good records. As to extenuating circumstances the judges would build up a flexible jurisprudence which would have all the value of judge-made law.[7] The Commission considered that their proposal would make the punishment more nearly fit the crime and this is entirely in accordance with the trend of modern criminological science. Lord Chorley said that there were in effect already two trials for murder, one in court and the other at the Home Office; the second trial he thought to be undesirable because it is held in secret, the Home Secretary must take everything on trust and as he is also responsible for the preservation of order in the community and the supervision of the police it is difficult for him to be unbiased. Foreign experience was that the scheme worked well and juries less often gave perverse verdicts in order to avoid the death sentence.

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[7] This is no doubt true but it is contrary to the proposal of the Commission that the jury should have "unfettered discretion and in no sense [be] governed by principles of law." [Eds.]

Lord Oaksey thought that the second trial would be as much an ordeal as the cases where the death sentence is passed and then followed by a reprieve. The evidence to be given at the second trial could not be tested by cross-examination and this lessened the likelihood of arriving at the truth.

Lord Goddard considered that it was illogical and wrong to say that if, at the second trial, the jury disagreed then the death sentence should follow, as proposed by the Commission.

The Bishop of Coventry thought that the jury were not competent to judge borderline cases of insanity and suggested that the Home Secretary should have a corporate body to assist him officially.

Lord Tucker suggested that the judges should be given the responsibility of deciding the sentence.

Viscount Samuel considered that the Commission's proposal would give rise to pleas of conscientious objection on the part of jurymen at having, in effect, to pass the death sentence. This task was at present not put upon anyone as it followed as an operation of the law. He considered that the Home Secretary with his wealth of experience was the person to exercise the negative function of stopping the operation of the law when necessary.

The Lord Chancellor, winding up the debate, promised that the Government would consider the views expressed and said that it had not had time fully to consider the proposals in the report.

Changes in judicial appointments

Croom-Johnson J. has resigned on the ground of ill health. Pearce J. has been transferred to the Queen's Bench Division. Mr. Eric Sachs, Q.C., has been appointed a judge of the High Court; he was called to the Bar in 1921, took silk in 1938, became Recorder of Dudley in 1939 and of Stoke-on-Trent in 1943; he has also acted as Commissioner of Assize. Mr. A. W. Cockburn, Q.C., has been appointed Chairman of London Sessions, and Mr. Henry Elam, Deputy Chairman. Mr. John Bass has been appointed Judge of the Mayor's and City of London Court.

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Blackmail

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The aim of the present article is to attempt a survey or restatement of the law of blackmail. The spade work has already been done in two articles of outstanding importance: Professor A. H. Campbell's on "The Anomalies of Blackmail" in (1939) 55 *Law Quarterly Review* 382, and Mr. W. H. D. Winder's on "The Development of Blackmail" in (1941) 5 *Modern Law Review* 21 and the very great extent of my indebtedness to them will become apparent as the discussion proceeds. The justification for digging over the ground again is that these articles each cover only a particular part of it, so that legal literature still lacks an attempt to present the rules relating to blackmail as an ordered whole. "Ordered whole" is perhaps an optimistic expression to use for a branch of the law that is notoriously chaotic; but it is the task of the jurist to try to find general principles even in the most unpromising material.

The meaning of "blackmail"

The expression "blackmail," though not used in the Larceny Act, 1916, is a convenient term to denote the offences in sections 29, 30 and 31 of demanding property or other advantages with menaces or threats. An alternative name is "extortion." Blackmail is now regarded as one of the most serious crimes; it has been described as "moral murder," and the victim may take his troubles to the police with the assurance that in any proceedings that may follow his name will not be revealed.

In ordinary parlance "blackmail" means the demanding of an advantage by the threat of exposure; but the sections just mentioned (or rather sections 29 and 30) are at the same time wider and narrower than this. They are wider in that they cover also the demanding of advantages by the threat of physical force, which would normally be called attempted larceny or robbery. They are narrower in that they are, in general, confined to the demanding of property; demanding advantages other than property is generally no legal offence. It must be understood that in the present article we are concerned with the three sections as a whole, that is to say with what would generally be called attempted larceny or robbery as well as with blackmail in the narrower sense, in so far as acts of these kinds are punishable under the sections.

Although blackmail and attempted robbery are historically blended, their criminological significance is quite different. "The incidence of robbery," observes Mr. Ruck "has been reduced to one-tenth of what it was in the middle of the last century, while blackmail has increased in an almost corresponding degree. Brute force is a factor of steadily decreasing importance in the commission of crime, and intelligence and education are now increasingly necessary attributes of the successful criminal" (*Penal Reform in England*, 2nd ed., p. 6).

Punishment under other rules of law

Before coming to the three sections, it will be well to recall the extent to which menaces are punishable under other rules of law. Taking property by menaces may amount to larceny or robbery according to the following rules.

(i) LARCENY. Larceny involves a taking without consent, but consent is regarded as vitiated by threats of personal injury or even of false imprisonment (*McGrath* (1869) L.R. 1 C.C.R. 205). The obtaining of chattels by such threats is consequently larceny. Threats of other kinds are not regarded as vitiating consent.

(ii) ROBBERY. If the threats are of personal injury the offence is not merely larceny but is the aggravated form of larceny called robbery, subject to certain rules set out by Mr. Winder. He shows that a taking by threats of accusation of discreditable conduct is not robbery, unless (according to old cases) the threat is to accuse of sodomy or indecency between males. The exception for accusations of these two offences is anomalous; it was developed at a time when the modern offences of blackmail were not upon the statute book or were not interpreted so broadly as they are now. Quite possibly the exceptions would no longer be recognised (*cf. Norton* (1838) 8 C. & P. 671).

Blackmail as a specific offence

It follows from the limitation upon the law of robbery that it was inadequate to deal with most cases of blackmail. Blackmail or extortion was apparently a specific offence at common law, but its scope was uncertain; consequently the legislature intervened. Since this legislation, the common-law offence appears to have lost all importance. The present law is stated in the three sections of the Larceny Act, 1916. These sections are too long to set out verbatim, but an attempt will be made to summarise them as a basis for the ensuing discussion. The principle of division between them is that of punishment: the punishment under section 29 is imprisonment for life, under section 30 imprisonment for five years, and under section 31 imprisonment for two years. It is to be expected from this that the offences are set out in descending order of gravity, though on the interpretation given to them by the courts there is in fact considerable duplication between them.

(1) *Threats uttered in order to obtain property*

Section 29 (1): imprisonment for life.

Section 29 (1) (i): uttering a writing demanding with menaces and without any reasonable or probable cause any property or valuable thing.

Section 29 (1) (ii): uttering a writing accusing or threatening to accuse of one of certain crimes with intent to gain any property or valuable thing. It will be seen that this paragraph covers not only written threats to accuse but also written accusations. Usually an accusation, if made with intent to gain property, will imply a threat to continue making the accusation if the property is not yielded up. Hence it seems that in practice there is generally a threat to accuse. It seems possible, however, that an accusation made without any present threat and merely as a basis for extortion in the future would be punishable under the paragraph. *Cf. Cooper* (1849) 3 Cox C.C. 547.

The crimes referred to are (subsection (3)) any crime punishable with death or imprisonment for seven years, assault with intent to rape, and incitement to sodomy. The Act also mentions attempted rape, which in 1916 was punishable only with imprisonment for two years. It is now punishable with imprisonment for seven years (Attempted Rape Act, 1948), and so no longer needs express mention.

It was held in *Morris* [1951] 1 K.B. 394 that at the present day there is no limit to the length of imprisonment that may be imposed for common-law misdemeanours, except that imprisonment for the misdemeanours of incitement and attempt must not exceed that for the consummated crime. It has not been decided whether these common-law misdemeanours are crimes punishable with imprisonment for seven years within the meaning of the Act.

Section 29 (1) (iii): the same as (ii), but without the requirement of writing. It is difficult to see the need for paragraph (ii), for it seems to be wholly comprised within paragraph (iii).

Section 30: imprisonment for five years. With menaces or by force demanding of any person anything capable of being stolen with intent to steal.

Section 31 (*a*): imprisonment for two years. With intent to extort a valuable thing, publishing a libel, threatening to publish any matter touching any other person (whether libellous or not: *Coghlan* (1865) 4 F. & F. 316), or proposing to abstain from or to prevent the publishing of such matter. The threat referred to in the section need not be in writing: *Wyatt* (1921) 16 Cr.App.R. 57.

(2) *Threats uttered in order to obtain other advantages*

Section 29 (2): imprisonment for life, where the advantage desired is broadly speaking the execution or cancellation of a valuable security (such as a promissory note or receipt). The intent must be to defraud or injure, and the pressure used must be force, false imprisonment, or threats to accuse of one of the above crimes (*i.e.*, those punishable with death, etc., as above) or any felony.

Section 31 (*b*): imprisonment for two years, where the advantage desired is an appointment. The pressure used must take one of the following forms (which have been set out once before): publishing a libel, threatening to publish any matter touching any other person, or proposing to abstain from or to prevent the publishing of such matter.

We may now consider in turn (1) the advantage demanded, (2) the pressure used to make the demand, and (3) the mental state and general justifications.

(1) The advantage demanded

Advantages other than property

The sections are for the most part confined to cases where the accused has obtained or attempted to obtain property. Generally speaking, the use of threats to obtain advantages other than property (such as the stopping of a civil action) is not criminal. This gap in the law might well receive the attention of the legislature. In George Eliot's *Felix Holt*, Jermyn, a solicitor employed by Harold Transome, a landowner, is threatened with a suit for defalcation. He in turn threatens that if proceedings are not stopped he will expose the fact that Transome has no title to his estates. The situation is unpleasantly possible, and it is clear that no crime is committed, except doubtfully the crime of interfering with the course of justice. The solicitor's aim is not to obtain property but to save himself from having to give up property. Again, it is not blackmail to make threats for the purpose of obtaining submission to an act of perverted sexual gratification; and threats for the purpose of obtaining a Government licence would not be blackmail unless the licence is in writing and so a chattel.

Exceptionally, as has been seen, violence or threats are punishable in certain circumstances if the object is to procure the making, etc., of a valuable security (section 29 (2); see the definition of "valuable security" in section 46 (1)), or the making of an appointment (section 31 (*b*)). There are also other crimes that can be used in some circumstances to fill up the law. It is a misdemeanour by threats to procure or attempt to procure the defilement of a woman (Criminal Law Amendment Act, 1885, s. 3 (1)); presumably this would cover the conduct of the elders with regard to Susanna. Some threats are forbidden apart from any motive. It is a felony to send a letter threatening to murder (Offences against the Person Act, 1861, s. 16), but, oddly enough, not a letter threatening personal injury short of death. Such a letter would be made criminal only by its motive. It would, for example, amount to an attempt to pervert the course of justice, if it were sent in order to intimidate a witness. In *Clayton* (1928), *The Times*, September 15, two policemen were convicted of conspiracy to pervert the course of justice when they brought a false charge against a girl who had refused to be complacent with one of them.

Sending a letter threatening arson or the wounding of cattle is a felony under the Malicious Damage Act, 1861, s. 50. Sending a menacing message by telephone is an offence under the Post Office Act, 1953, s. 66.

For the rest, section 29 (1) of the Larceny Act, 1916, applies only to attempts to obtain " any property or valuable thing," *i.e.*, any real or personal property (see section 46 (1)), section 30 only to attempts to obtain " anything capable of being stolen " (a narrower conception than " property "), and section 31 (*a*) only to attempts to obtain " any valuable thing."

Threats to obtain property

A few words of comment may be offered upon the language of sections 30 and 31 (*a*). Does the expression " anything capable of being stolen " in section 30 refer only to things capable of being stolen under section 1 of the Act of 1916, or does it cover also things that are the subject of special statutory offences of stealing under other sections of the statute or under other statutes? For instance, would it be an offence under section 30 to demand a dog with menaces? See section 5. It is submitted that " anything capable of being stolen " includes anything that is the subject of any statutory offence of stealing.

The term " valuable thing " is not defined, but it seems that the expression, as used in section 31 (*a*), would not include real property or leaseholds, for land is not in law a " thing " (*chose*). In practice land could not generally be obtained without procuring the execution of a document of title, which comes within the definition of " valuable security " in section 46 (1) and probably also within the meaning of " valuable thing "; it also comes within the definition of " anything capable of being stolen " in section 30 (see section 1 (3)). Consequently blackmail to obtain such a title deed is punishable under sections 30 and 31, as well as under section 29.

The expression " valuable thing " is probably wider than " anything capable of being stolen " in section 30, for it would probably include the documentary evidence of the right to services, which is a chattel having value although it is probably not larcenable.

It is immaterial that the blackmailer offers consideration for the property demanded : *Redman* (1865) L.R. 1 C.C.R. 12.

In no case is it necessary that the property in question should actually have been obtained. Unlike robbery, which requires a completed larceny, the essence of blackmail is the force or threats, not the obtaining. It was held in an Australian case (*Hopkins* [1924] V.L.R. 484) that on a charge of "demanding" there must not be a conviction for an attempt merely because the demand was not successful; the proper conviction is for the consummated crime. The charge of blackmail will lie even though the property was actually obtained in circumstances amounting to larceny: *Robertson* (1864) Le. & Ca. 483 (C.C.R.).

The decision in *Moran*, 36 Cr.App.R. 10; [1952] 1 All E.R. 803 (C.C.A.) causes some difficulty. It was there held that there could be no attempt to demand money with menaces under section 30. This seems to overlook the situation where D posts a letter to P demanding money with menaces, and the letter never reaches P; surely there is then an attempt to demand. The court seems to have assumed that on the facts before it there was nothing more than the mental intention, and in that event there could clearly be no conviction. It seems, however, that on the evidence the jury might have been directed that the full offence under section 30 had been committed.

(2) The force, threats or other pressure

The offence of blackmail also differs from robbery in that the threat need not have been made in the presence of the prosecutor, and in that some forms of the offence include a wider range of threats than robbery.

Section 29 (1) (i) covers written menaces; section 29 (1) (ii) and (iii) cover accusations or threats to accuse of certain crimes. Section 29 (2) covers violence, false imprisonment, and threats to accuse of the same crimes or any felony. Section 30 covers menaces or force, and section 31 covers the publishing of a libel, and the threat, etc., to publish any matter concerning any person.

The meaning of "menaces"

It will be seen that there is overlap between these various provisions, and the overlap becomes all the greater when it is added that according to the authorities the word "menaces" (which is twice used—in section 29 (1) (i) and section 30) includes threats of accusation. It is convincingly argued by Mr. Winder that originally the word was not intended to bear this meaning, but was confined to the threat of physical force. The three sections of the Larceny Act, 1916, are merely the modern version of older legislation, and the provisions now embodied in the three sections originally appeared in three different statutes enacted at different times. Section 29 (1) (i) goes back ultimately to the Waltham Black Act, 1722, which appears to have been directed against demanding with an implied threat of violence. The courts came to hold, however, that no threat of violence was necessary for a conviction under the Act (*Robinson* (1796) 2 Leach 749), and similarly that in the legislation replacing this Act the word " menaces " was not confined to threats of physical violence—that is, attempted robbery—but covered other threats, *i.e.*, blackmail as we now understand the word (see *Tomlinson* [1895] 1 Q.B. 706 (C.C.R.)). The House of Lords set the seal upon this interpretation in certain *obiter dicta* in *Thorne* v. *Motor Trade Association* [1937] A.C. 797 at 806, 817; 26 Cr.App.R. 51. Lord Atkin said: " If the matter came to us for decision for the first time I think there would be something to be said for a construction of ' menace ' which connoted threats of violence and injury to person or property, and a contrast might be made between ' menaces ' and ' threats ' as used in other sections of the various statutes." He held, however, that he was constrained by authority to give it a wider meaning. So also Lord Wright : " I think the word ' menace ' is to be liberally construed and not as limited to threats of violence but as including threats of any action detrimental to or unpleasant to the person addressed."

This interpretation may be thought to be borne out by section 29 (4) (which replaces a similar provision in the Larceny Act, 1861, but did not appear in the statutes before 1861), according to which " it is immaterial whether any menaces or threats be of violence, injury, or accusation to be caused or made by the offender or by any other person." This seems on the face of it to make " menaces " synonymous with " threats." However, Mr. Winder contends with much force that as a historical matter the significance of the subsection is to be found in the last five words, and that its sole object was to provide for the threat of an evil to be visited by a person other than the accused. In other words, the subsection should be read as though it were worded: " It is immaterial [for the purpose of offences under section 29] whether any menaces [the word used in section 29 (1) (i)] be of violence or injury to be caused by (*a*) the offender or (*b*) any other person, and also immaterial whether any threats [the words used, in effect, in sections 29 (1) (ii) and (iii) and 29 (2) (*b*)] be of violence, injury or accusation to be caused or made by (*a*) the offender or (*b*) any other person." By putting the emphasis upon the concluding words in this way, and reading the word "accusation" in conjunction with the word "threats" and not with the word "menaces," it is possible to avoid holding that the subsection was intended to make "menaces" include threats of accusation. However, this is not the interpretation adopted by the courts.

There has been a similar development in the interpretation of the word "menaces" in section 30. This section goes back to an Act of 1734, where it clearly meant threats of physical force (Winder, *op. cit.*, pp. 42–3). The intention is reflected in the requirement that the goods should be capable of being stolen and that there should be an intent to steal. As has been seen, there can in general be no stealing where the property is handed over as the result of threats, unless the threats are of force or false imprisonment. The offence in section 30 was evidently intended to cover only threats of these two specific kinds, which apart from the section would be only an attempted larceny. If the accused used threats of physical force or false imprisonment and thus obtained property, he would be guilty of larceny; consequently, his threats were made "with intent to steal" and the mere threats were an offence under section 30. But the common-law doctrine has never been extended beyond threats of physical force or false imprisonment; thus a person who obtains goods by threats of accusation of immorality would not be guilty of larceny. Consequently it would seem as a matter of logic that the threats cannot fall within section 30. The courts hold, however, that they do fall within section 30. The first extension occurred in *Taylor* (1859) 1 F. & F. 511, where a threat to commit arson was accounted a menace. Then, in *Robertson* (1864) Le. & Ca. 483, it was held that a threat to prosecute for a non-existent offence was a menace. Similarly, in *Boyle* [1914] 3 K.B. 339; 10 Cr.App.R. 180 (C.C.A.), D demanded from a company a sum of money as the price of refraining from attacks upon it in a newspaper. He was convicted under the provision now contained in section 30. See also *Studer* (1915) 11 Cr.App.R. 307. The general principle had been laid down in a contrary sense in *Walton* (1863) Le. & Ca. 288 at 297: "a demand of money with intent to steal, if successful, must amount to a stealing."

The decisions in *Robertson* and *Boyle* are really at variance with the words of the section. The section requires an intent to steal, and there can be no intent to steal unless the crime, if consummated as the accused intends, would amount to larceny. Now to obtain goods or money by threats of accusation is not larceny, for such threats do not vitiate the owner's consent. Consequently the threats cannot be said to be made with intent to steal. Notwithstanding this grave difficulty, the extended interpretation of the section must now, apparently, be taken as settled.

The effect of extending the meaning of "menaces"

The result of holding that the word "menaces" includes any threat is striking. Under section 31, the ordinary case of blackmail by a threat of accusation is punishable only with two years' imprisonment. But by interpreting the word "menaces" to cover such a threat, the offence becomes punishable with imprisonment for life under section 29 (1) (i) if the threat is in writing, and with imprisonment for five years under section 30 if it is oral. Section 31, therefore, becomes largely otiose. Section 31 originally appeared in the Libel Act, 1843, and it appears to have been designed to penalise for the first time the ordinary case of blackmail. At that time the offence was not generally regarded with such seriousness as it is now, and two years' imprisonment was thought to be an adequate maximum punishment. But in 1843 the courts had already begun to give an extensive interpretation to the legislation now consolidated in section 29 of the Larceny Act, 1916, and the continuation of this process and its extension to section 30 has, as said already, rendered the Act of 1843 (now section 31) of comparatively little value. In view of the light punishment under section 31, prosecutions are no longer instituted under that section if the case falls within the modern interpretation of either of the two previous sections.

The extensive interpretation of the term "menaces" in section 29 (1) (i) also emphasises the redundancy of section 29 (1) (ii). It has already been pointed out that this paragraph falls wholly within the scope of paragraph (iii). But in addition it now falls very largely within the scope of paragraph (i). Suppose that D writes to P a letter demanding money under the threat that if it is not forthcoming he will accuse him of having (*a*) committed murder and (*b*) obtained property by false pretences. In respect of the threat to accuse of murder the case falls within paragraph (ii) and also, now, within paragraph (i). Obtaining property by false pretences is punishable with imprisonment for five years, and it is not one of the crimes referred to in paragraph (ii); consequently this threat is not caught by the latter provision. It is, however, a " menace " within paragraph (i), on the wide interpretation given to that term; thus the threat comes within that paragraph. It will be seen that on this interpretation practically every offence falling within paragraph (ii) falls also within paragraph (i), while the latter covers other threats that are not punished by paragraph (ii).

There are only one or two cases falling within paragraph (ii) without falling within paragraph (i). Suppose that D, intending to blackmail P, sends him a letter threatening to accuse him of one of the crimes mentioned in the section, and subsequently makes an oral offer not to carry out his threat if he is paid money. This falls within paragraph (ii), but not within paragraph (i) because although the menace is in writing the demand is not. However, the case also falls within paragraph (iii).

Another possible case is where the threat is to accuse of crime some person other than the one from whom the demand is made. This falls within paragraph (ii), but possibly not within paragraph (i). However, it falls also within paragraph (iii).

To sum up the present part of the discussion, it may be said that the broad effect of the sections is as follows. All three sections cover threats of accusation as well as (in the case of section 29 and 30) threats of violence. If the threat is in writing, it is generally punishable with imprisonment for life under section 29 (1) (i). If it is not in writing, it is punishable with five years' imprisonment if it falls within section 30, and with two years' imprisonment if it falls within section 31. There is one exception to this broad distinction between written and oral threats in the matter of punishment: by section 29 (1) (iii), blackmail by a threat to accuse of one of the crimes mentioned in the section is punishable with imprisonment for life whether the threat is in writing or not.

It is difficult to understand why as a matter of modern law the difference between written and oral blackmail should in most cases involve such a striking difference of punishment. In their human consequences there is no difference between the two. It is true that written blackmail may be harder to detect and therefore safer to commit, because a blackmailing letter can be sent anonymously; but then section 29 (1) (i) is not confined to anonymous letters. (The Waltham Black Act, 1722, from which the provision in section 29 (1) (i) took its origin, was so confined.) The true explanation of the difference of punishment seems to be partly the historical accident that the various provisions were originally contained in different statutes, and partly the course of judicial interpretation which applied to the blackmailer a punishment originally intended for the robber and arsonist.

There is one type of case, in particular, in which the requirement of writing is wholly anomalous. This is where there are threats of physical violence accompanied by a claim of right to the property demanded. For example, in *Hall* (1828) 3 C. & P. 409, a gamekeeper confiscated some wires belonging to the prisoner and a pheasant caught with them, as the gamekeeper was entitled to do. The prisoner lifted up a large stick, and threatened to beat the gamekeeper's brains out if he did not give them back again. The gamekeeper, fearing violence, did so. It was held that if the prisoner, though having no actual right to the articles, thought that he had the law on his side in demanding them, he could not be convicted of robbery. He was convicted of common assault, the maximum punishment for which is one year's imprisonment. Yet if he had quietly gone home and written a letter to the gamekeeper threatening to beat his brains out if the articles were not returned, the written threat would carry a maximum punishment of imprisonment for life under section 29 (1) (i). (As will appear in the concluding part of this article, a claim of right to the property demanded is no defence to a charge under that paragraph where, *inter alia*, the threat is to do an illegal act.) It is wholly irrational that the maximum penalty for a threat of violence at some time in the future communicated in writing should be greater than for a threat of immediate violence made by a ruffian who is present.

The meaning of "threats"

It has been held, on the construction of the word "threatening" in section 29 (1) (ii), (iii), that words may be taken in the sense in which they were intended and understood, even though not their ordinary sense apart from the circumstances in which they were uttered (*Stuart* (1927) 20 Cr.App.R. 74; 43 T.L.R. 715; *cf. Cooper* (1849) 3 Cox C.C. 547). Parol evidence may be given to explain the writing (*Tucker* (1826) 1 Mood.C.C. 134), and evidence of admissions by the accused when in custody is also admissible (*Kain* (1837) 8 C. & P. 187). It seems clear that a threat to prosecute is a threat to accuse (*Abgood* (1826) 2 C. & P. 436; *Gill* (1827) 1 Lew.C.C. 305); but a threat to procure witnesses to support a charge already made has been held insufficient (*Gill*, above), though it comes within the mischief of the Act.

Although the threat of an evil to be brought about by a third person with whom the accused is in some way connected is sufficient for the purpose of the offence (Larceny Act, 1916, s. 29 (4); *Smith* (1850) 1 Den. 510 (C.C.R.)), it is no offence to offer for reward to frustrate the illegal designs of third persons with whom the accused is not and does not pretend to be associated (*Pickford* (1830) 4 C. & P. 227 (C.C.R.)).

It is still an open question whether blackmail is committed where the threat is not to injure the victim in his existing position but is to prevent him from gaining an advantage for which he hopes. For example, the accused may have extorted money by a threat to use his influence to prevent the prosecutor from getting a post for which he is applying, without threatening to reveal matter discreditable to the prosecutor. On the whole there seems to be no sufficient reason for denying that such conduct amounts to blackmail.

However, some cases lay down the rule that a " menace " must be such as would deprive an ordinary man of the free and voluntary action of his mind (see *Boyle* [1914] 3 K.B. 339 at 344). Unless carefully applied this rule is somewhat too favourable to the accused. In a Quebec case (*Choquetter* (1947) 89 Can.C.C. 207), the accused telephoned to the complainant, who did not know him, demanding that the complainant pay to him $5,000 and adding that if the complainant did not do so " *ça va aller mal.*" It was held that the words did not constitute a " menace " within section 452 of the Canadian Criminal Code, modelled upon what is now section 30 of our Larceny Act, 1916. The words did not constitute a " menace " because they would not be believed by a reasonable person to be dangerous. So also it has been held in Canada not to be blackmail to threaten to prosecute under the liquor laws (*McDonald and Vanderberg* (1892) 8 Man.L.R. 491 (C.A.); but *cf. Gibbons* (1898) 12 Man.L.R. 154 (C.A.)), or to offer to get hostile witnesses out of the country if their travelling expenses were paid (*Hatch* (1911) 18 Can.C.C. 125 (B.C.)). These decisions are open to question, and a more satisfactory ruling was given by the Saskatchewan Court of Appeal to the effect that every threat of injury to character is necessarily a menace, however the victim regards it (*Pacholko*

[1941] 2 D.L.R. 444). There is also English authority for saying that a menace may be a threat of injury to a third person; it need not be a threat to injure the person to whom it is addressed and from whom the property is obtained (*per* Lord Russell C.J. in *Tomlinson* [1895] 1 Q.B. 706 at 708, 709).

(*To be concluded.*)

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Who is a Wife?

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R. v. Alger

The recent case of *R.* v. *Alger*, p. 135, raises several interesting points connected with the admissibility of evidence by a " wife " of the accused person in a criminal trial. As the Lord Chief Justice said in this case, " at common law one spouse could not give evidence against the other except in the case of offences against the person or liberty of the other party to the marriage," and but for the elaboration of the exception (with which this article is not concerned) in section 4 of the Criminal Evidence Act, 1898, and subsequent legislation, the general principle remains sound law at the present time (see, *e.g.*, *Director of Public Prosecutions* v. *Blady* [1912] 2 K.B. 89). Difficulties arise, however, when in a particular case there is some doubt whether a particular woman is legally the " wife " of the accused—we are here dealing with " wives " rather than " spouses," as a matter of convenience, but our remarks, *mutatis mutandis*, apply equally to " husbands " of accused persons.

Particular examples

If a decree of divorce has been pronounced in respect of the particular marriage, the parties are apparently no longer in the position of husband and wife for present purposes, and each can testify against the other in criminal proceedings, so far as events occurring after the divorce are concerned. As to matters which have arisen during coverture, however, it is quite clear that the incompetency rule is not affected by a subsequent divorce: *Monroe* v. *Twisleton* (1802) Peake Add. Cas. 219, and other cases cited in *R.* v. *Alger*. The same principle applies to a voidable marriage where a decree of nullity is obtained by either party on the grounds of impotence or under the Matrimonial Causes Act, 1950—this was the case in *R.* v. *Alger*. If the marriage was void *ab initio*, however, on the grounds of non-age, bigamy, consanguinity, lack of form, etc., *ex hypothesi* the marriage never existed at all, and either party must be competent to be called against the other: *Wells* v. *Fisher* (1831) 1 Mood. & R. 99.

Proof

In practice, the greatest difficulty often arises over questions of proof of the invalidity of a prima facie valid marriage. It is submitted that if the issue is one of a divorce or of a voidable marriage, and evidence is desired to be given of events taking place subsequent to the termination of coverture, the relevant decree must be proved strictly, and the trial court will be entitled to satisfy itself as to the competence of the former court to pronounce such a decree. Questions of private international law may therefore well be raised in the course of an argument as to the admissibility of the evidence of the witness.

In the case of a void marriage, however, a decree of a competent court would not seem to be strictly necessary, although of course if one has been pronounced, it should be proved. If there has been no such decree, it is submitted that the trial court must hear such evidence as may be available, at the preliminary stage known as the "voire dire," and adjudicate (for the purposes of the question of the competence of the witness alone) on the validity or otherwise of the marriage:

> "Upon the subject of marriage, the Spiritual Court has the sole and exclusive cognisance of questioning and deciding, directly, the legality of marriage; and of enforcing, specially, the rights and obligations respecting persons depending upon it; but the Temporal Courts have the sole cognisance of examining and deciding upon all temporal rights of property; and, so far as such rights are concerned, they have the inherent power of deciding incidentally, either upon the fact, or the legality of marriage, where they lie in the way to the decision of the

> proper objects of their jurisdiction . . ." (*per* Sir William De Grey C.J. in the *Duchess of Kingston's Case* (1776) 20 St.Tr. 355).

Such matters will, of course, be the concern of the judge himself, in the absence of the jury. The evidence that may be produced on the question of validity will be confined normally to the depositions, and the "wife" herself will not, it is submitted, be a competent witness for this purpose. This must follow, it is suggested from first principles, for a marriage is presumed to be valid until the contrary is proved, and until invalidity is established the witness is for present purposes the "wife" of the accused. The old cases of *Campbell* v. *Twemlow* (1814) 1 Price 81, and *Peat's Case* (1838) 2 Lew.C.C. 288, seem to be in support of this view, but in *R.* v. *Young & Muezzell* (1851) 5 Cox C.C. 296, it was held that a woman who said she was married to one of two prisoners, could be examined to prove that the same prisoner had previously been married to the witness's sister, and that her marriage (at that state of the law) was therefore invalid; in that case the court held that she was a competent witness against the prisoner. Further, a woman who had merely cohabited with the accused and passed as his wife, was held not to be affected by the general rule, and was a competent witness on behalf of the accused : *Batthews* v. *Galindo* (1828) 4 Bing. 610.

Forgery of savings bank book

In a case at quarter sessions, in which the writer was recently concerned, the accused was charged with forgery of a post office savings bank book belonging to a woman with whom he had been living as her husband. This woman at the court below had sworn that she and the accused had gone through a ceremony of marriage, and had then lived together as man and wife; subsequently she had discovered that the accused had been married previously and that her marriage with him was therefore bigamous. On this deposition alone, the prosecution submitted that the woman's evidence was admissible, but the learned recorder ruled that, having gone through a ceremony of marriage with the accused, she was prima facie his wife, and that therefore her evidence was inadmissible against him. If the validity of the marriage was to be impeached, evidence of its bigamous character should have been furnished *aliunde*. Further, the difficulty was apparent on the depositions, and therefore the learned recorder refused a prosecution application for an adjournment in order to adduce additional evidence covering the point.

If, however, evidence of the prior marriage, of the absence of any divorce or nullity, and to the effect that the first wife was still alive at the time of the second "marriage," had been adduced in the court below (or if proper notice of the intention of the prosecution to call such evidence had been given to the accused before the trial), and provided such evidence had been obtained otherwise than from the "second wife," then her evidence on the main issue would have been admissible, and she would have been a competent witness against the accused, although she described herself as his "wife."

The Courteous Pigeons

The disturbance created by pigeons in Trafalgar Square and in Birmingham has now spread to a court of law. One of Her Majesty's judges was very much disturbed by a continual noise outside the window of the Midland assize court in which he was sitting. An usher, who was sent out to stop the clamour, reported that pigeons were responsible and that they could not be dislodged. "Oh," said the judge, "they are not nearly so polite as the pigeons in the Temple. There they spend their time walking about and bowing and saying 'Croom Croom—Croom Croom'."

Recording as Testimony to Truth

By T. B. Radley

Recently, suggestions have been made that police officers, instead of writing out the statement of a witness and getting him to sign it, should be enabled to make a recording of an interview which should then be admissible as evidence.

There seem to be three possibilities. The first, which seems to be the kind of suggestion now being canvassed, is that the recorded confession, superseding the written one signed by the person confessing, should be used instead of it. The second possibility is the converse of the first; namely, that under no circumstances should a recorded confession be held to have any legal force. The third possibility is that in some way a recorded confession should be enabled to supplement other evidence. Before discussing these possibilities it is desirable to know something about the nature of recording.

Three main methods of recording exist. One of them, by means of photo-electric cell and utilised for cinema film, need not be discussed here. Of the other two, mechanical recording is the earlier invention, and magnetic recording the later. The principle underlying all of them is to translate the variations of the actual sound waves of speech or music into another sort of wave or variation which is more or less permanent.

MECHANICAL RECORDING

Mechanical recording by an appropriate machine translates the sound waves into the vibration of a cutting needle. The point of the vibrating cutter is drawn steadily across a wax-like surface prepared to receive it, and so cuts a wavy groove in the surface. The variations in the waviness of the groove answer with considerable exactness to the noise or noises which originated them. So, to reproduce the sounds again it is only necessary to reverse the process by which the groove was made. That is, the groove is moved along the point of a needle which is delicately balanced so that it vibrates freely according to the variations of the groove. The vibrations of the needle are then translated by mechanical or electrical means into sounds, which can very nearly indeed approximate to the sounds originally made.

Two common machines, the office dictaphone and the gramophone, are based on this method of recording. In the usual dictaphone the groove is cut in a helix round a hollow wax cylinder. For a gramophone the groove is cut in a spiral on a flat wax plate called a "record" or a "disc."

What is not generally realised is that such recordings can be easily altered, as indeed any type of recording can be. In assessing the worth of a recording as truthful testimony this is palpably important, and it is desirable to show how changes can be made.

The principles underlying making such changes are very similar for all types of recording. So, first, a fairly detailed description will be given of how changes are made in the content of mechanical recording on disc, because some of the processes described may be tried upon ordinary gramophones and commercial discs with which most people are already familiar. Once the principles are understood for making changes in such a type of recording, it is much easier to understand how changes can be effected with other types.

Anyone familiar with a gramophone knows that a recording may be stopped at any point simply by lifting the needle, and restarted at any other point simply by putting the needle down again. Suppose that a piece of evidence is recorded on disc, consists in three parts A, B, and C, and that B contains a damaging admission. When the disc is played the needle can be lifted at the end of A and put down again at the beginning of C, thus omitting the damaging evidence of B. Anyone owning a gramophone will be astonished to discover how skilful he can become with practice at this particular operation. He is advised to mark the points on the record which he wishes to omit with a child's wax crayon: yellow is the brightest colour for it.

Now, couple that possibility with this: that it is as easy to record a recording as it is to record the original voice, since both are noise. This re-recording process is known as "dubbing."

Therefore, taking the original evidence consisting in parts A, B, and C, it is possible to re-record or dub parts A and C only, omitting B, by jumping the needle quickly and neatly from A to C on the original disc. Parts A and C on the new disc or dubbing will then run continuously, and will sound to almost any ear exactly as though the person confessing had simply confessed to A and C, and all in one continuous speech. If the original disc were then destroyed and the dubbing had been very well done it might well be virtually impossible to infer the pre-existence of the original from the dubbing. The dubbing would seem original, even perhaps to an expert.

It must be clearly understood, moreover, that this is only the most primitive of several ways of altering a disc. But most methods depend on possessing (1) more than one turntable; (2) gramophone pick-up arms which can be pre-set so as to lower a needle on to the exact groove required; and (3) on mechanism to control the strength of sound coming from a disc. Such apparatus exists. It is common and necessary, for example, in broadcasting, where the skill to use it is fairly common also. Broadcasting technicians who do this kind of work are capable of feats of patching and joining sound far beyond any work which they are normally called upon to perform. For example, they can turn what was originally an interrogation with quick question and answer into continuous monologue by the answerer, and this to the writer's knowledge has successfully been done for broadcasting purposes.

As to the limit of fineness of elimination which is possible with good machines and skilful operators, this is smaller than might be expected. It is often possible, granted skill, to eliminate even a single monosyllabic word. The easiest way to do this is to turn off the loudspeaker current while the word is being spoken. This leaves a little gap of silence on a dubbing, but even this gap can be closed if necessary.

Alteration of a statement

Turning for a moment to a hypothetical recorded confession, it is apparent that a remark originally, "I am not guilty," could be altered fairly easily to "I am guilty." It may also occur to practised speakers, and many in the legal profession are this, that "I am (slight pause) guilty" will only sound the more impressively guilty.

So much for the possibilities of elimination, which are merely negative. There remains the converse operation, the positive one of inventing a text in the speaker's own voice which in fact he did not say. Virtually, this is indeed feasible.

The broad possibility of it can be inferred from what has already been said about elimination and dubbing. It must be obvious from that that a text can be rearranged. Harking back to a confession consisting in three parts A, B, and C, it should already be clear that they can be dubbed in any order desired. Now, because the context of any remark colours its meaning, this facility for altering the order could be made to have a marked effect on the meaning of the text.

Consider the following, for example:—

"I am not guilty but Jones says I am."

This can be divided into these three sections:—

A. I am not guilty but
B. Jones says
C. I am

Put this into the order B A C and observe the effect.

This may be a somewhat impudent example, but there would be little technical difficulty in making those changes, so that the dubbed disc sounded as though it were what the confessor had said and meant—and the dubbing would still be in his own voice.

Worse still, this is a process which is cumulative. Granted an extended original (15 to 20 minutes speech would be enough), almost anything other than what was said could be made of it by a skilled worker with discs. The writer is thankful that this simple fact was evidently unknown to the late Dr. Goebbels, for example.

At this point some notice ought to be taken of an aspect in a different field from mechanical possibilities. This aspect concerns mainly such matters as voice inflection and the usual vocabulary of any person speaking. In the example given immediately above, out of the several ways in which a speaker might have inflected the original words, most would be right and natural to the sense of the suggested order BAC. In fact, the example was concocted with this in mind. But inflections will not always lend themselves to a desired change, though the words themselves might appear to do so.

Consider this sentence:—

"He knows too much about this sort of thing."

Were this sentence recorded it could almost certainly NOT be rearranged into:—

"Much about this sort of thing he knows too."

The reason is that in the original the words "this sort of thing" would be descending steeply in pitch; and the words "he knows too" would be probably ascending towards a high note and a stress on "much." Consequently, if the sentence were rearranged by dubbing, it would sound decidedly queer, as anyone may try for himself. So, the inflections and stresses inherent in speech do forbid some kinds of alteration, and anyone attempting such work needs a fine ear and some knowledge of inflection patterns. Broadcasting experience shows clearly that it is the ear and not manual skill which is the limiting factor in editing work.

Magnetic Recording

It is now easy to turn from mechanical recording to the historically newer method of magnetic recording, of which the latest form is tape recording.

As most people know, it is feasible to give a magnetic charge to a piece of iron or steel. What is not so generally known is that a magnetic charge can be given which varies from point to point along a length of steel, and that steel will retain the charge indefinitely in all the sharpness of its variations. This is the property which makes magnetic recording possible.

The earliest practical form was actually done on steel wire. The wire was set in motion at an even pace through a magnetic recording head, to which was attached a microphone. This turned the sound waves into corresponding electric impulses, which were imprinted on the wire as correspondingly variable magnetic charges. These mirrored with great fidelity the original sounds.

To play such a recording the direction of the basic process was reversed. The wire was run through the head, and there, *without diminution of its own strength*, the magnetic charge induced a variable electric current. The current was fed into a loudspeaker, which turned it into sound.

Such recordings can be of very good quality, but an awkward difficulty was the weight and bulk of the wire.

During the late war the Germans made great strides with the production of a light and magnetisable plastic tape, which could replace the heavy wire. After the war, progress became general. Today, many broadcasting stations do all their recording on tape, which will probable supersede mechanical recording for many purposes. There are also on the market now for private persons tape recording machines of good quality, comparatively cheap, and very easy to manipulate.

Police use

That brings in a general consideration with reference to police work which can hardly fail to become important. To suppose that these private machines will soon become fairly common is only reasonable. That means, as disc recording never meant, that amateur tape recording will become commonplace. The present writer has already heard private amateur tape recordings of technically excellent quality. In its turn, all this must involve a much wider spread of the knowledge and skill required to edit a recording; and that in its turn perhaps should be taken into account before making a permanent change involving the use of recordings in police work.

Furthermore, the plain truth is that a tape recording, in almost every respect, is more easily edited than a disc recording. The basic process for eliminating unwanted material is to snip out the unwanted length of tape by two cuts of a pair of scissors and to stick together the two ends left. Such a join, if properly made, cannot be heard at all. A tape, so edited, can be dubbed on to another tape with no loss of quality at all, and, of course, no join. This last would be an important point in police work, for with discs there is always a slight loss of quality on dubbing which might be enough for the expert to suspect, even where he could not prove it, that a disc was in fact a dubbing. But a dubbed tape and its original are to all intents of the same quality.

It follows that if a tape is edited by snipping away unwanted material, and by changing the original order where required, and if, when complete, it is dubbed on to a tape with no joins in it, the latter will be undetectable as a dubbing.

One or two other characteristics of a tape recording only render editing more facile still. For example, the same machine at the click of a switch, will record, or play back a recording that has been made. As well as this, at the click of another switch a recording on tape may be completely and untraceably eliminated from any length of tape desired. This is done by running the tape through the recording head with the recording machine set to demagnetise the tape. In other words the same tape may be used for many different recordings without loss of quality. A tape does in the end become somewhat stretched and a little warped, but only after a great number of playings.

To all this must be added a greater degree of fineness of elimination than can be obtained in disc editing. It is possible with magnetic tape, though it is not easy, not merely to eliminate a single monosyllabic word, but even a single letter. For example, it would be possible to change the word "chip" into "ship". That is to say, the initial "t" sound could be neatly excised by cutting out the tiny piece of tape carrying that sound and then joining the ends. It would be a delicate task, but it could certainly be done. A modern broadcasting tape recorder usually runs at the rate of fifteen inches a second. A word like "chip" would take perhaps three or four inches, and the initial "t" sound perhaps a quarter of an inch, and the difficulty lies in identifying the exact quarter of an inch which carries the sound. Even at 7½ inches a second, which is much more usual for domestic tape recorders, the job could still be done. As with disc, the limit is really set by the acuteness of ear of the operator.

Prevention of forgery

As the possibilities of what might be called forging a recording are so extensive, perhaps the next question is whether forgery can be prevented and, if so, by what means.

It would be possible to imprint on the tape used for police work a fine pattern which ran through its whole length. A fairly standard length for a tape is enough for half an hour's recording; that is, some 2,250 feet at 15 inches a second. That seems a great length—nearly half a mile—but a mathematician would realise that a completed wave pattern which did not exactly repeat itself for hours at 15 inches a second would be quite easy to design. By simple measurement it would then be possible to determine whether tape had been cut out or not, because the pattern would be hard to match; just as the scroll patterns on a pound note are. Unfortunately, such a method would do little to prevent one recording on a tape being demagnetised and another substituted. Perhaps a better means would be to superimpose upon the magnetisations due to speech when a recording is made, other magnetisation of a similar complicated non-repeating wave pattern. Before the recording could then be played at all to make speech again, the superimposed magnetic wave pattern would have to be unscrambled from it. All this could be managed, and it would in fact make forgery very difficult, but perhaps it would not be in the public interest to describe at all closely how it could be done: it would be a pity to write anything which might be used as a forger's vade mecum.

Besides, such means as these are open to a grave objection: they might convince the expert of genuineness, but he would be the only sort of man who could understand what they involved. Whatever means are taken would be more practical if they were not only safe but appealed at once to the ordinary member of the public as being so.

The opposite danger is to employ means which look safe and are not. Most suggestions made by people not familiar with recording processes come under this head. One example must suffice. It has been suggested that if the recording tape were signed at both ends by the person recording his testimony, then the only risk would be a forged signature—a thing difficult to forge well and always detectable. Unhappily, the real security obtained by this means would be negligible, as anyone should perceive who has read this article up to here. This, for instance, is one method of forgery left open:—

Call the original signed tape X. Take X and dub it on to tape Y. Except for the signatures, X and Y are now indistinguishable. Edit Y into whatever forgery may be desired. The principles underlying this operation have already been described. Take care that Y when edited is the same length as X. Next, demagnetise X, a process taking only a few minutes, and X then becomes an unused tape still signed at both ends. Now dub the edited Y on to X. At the expense of a single afternoon's fascinating work, X will then record the required forgery, though still signed at each end with a genuine signature and being in fact the original tape. Signature may be a device which would satisfy the public, but it is in fact no safeguard at all.

The essence of any safeguard which is at once real *and understandable* seems to lie in physically guarding the tape as soon as a recording has been made on it; and making sure that it is under guard until it is needed for a lawful occasion.

The Use of Recording

What remains now seems to be that which might be said by one familiar with recording and the spoken word which might throw a little direct light on the three possibilities set out at the beginning of this article. The first was that recorded confession should supersede the written one. The second was that recordings should not be admitted as evidence. The third was that recording should be used to supplement the written confession.

In one sense, all of this article so far might be read as evidence that the first possibility is unsafe. So, no more need be said about that possibility here.

That lack of safety may seem to point to the second possibility as the most desirable; namely, that recordings should *not* be used by the police. That is an extreme position, and it does embody a logical fallacy; for it does not follow of necessity that if a thing is erroneous its converse will be the truth. It might be better to suggest that a recording should not be used in police work if a recording never conveys some part of the whole truth better than a written script. To put this another way nearer to the heart of the matter: Is the spoken word inferior *at all points* to the written word as a vehicle for truth? That is a question which the legal profession especially might hesitate to answer with an unqualified yes, since so much of the process of the courts of law is conducted through oral means. It is also probable that nobody connected professionally with broadcasting would answer yes to it either. This suggests that the third possibility may be worth considering.

A written confession can never contain exactly all that was said. A recorded confession, neglecting forgery, does. It would contain the questions of the police as well as the answers to them, and every intake of breath and casual cough to boot. It might be awkward for either side on occasion; but at least it would be the truth, the whole truth, and nothing but the truth—neglecting forgery.

Secondly, recording can be a means of arriving at a written confession. A script made from a recording is common practice in broadcasting, and there is no reason why a comparable script should not be used by police and witness for editing into a final form agreed by both. The process is one which allows scope for thought, care, and accuracy.

Thirdly, a recording does contain a whole range of material which is beyond the reach of words as written down. All men have heard the old cockney tag: "It ain't so much wot 'e says; it's the wye 'e says it." A recording retains the way in which things are said. No practised advocate, it may be supposed, could deny the importance of this element. Professionals in broadcasting are acutely aware of it. Their name for it is "voice-cast." By that they mean something more than detail of inflection and vocabulary. They mean the whole colour and shadowing of a speech, the laughter underneath the words, or surprise, and the way the voice tells of ideas struggling upwards to form themselves into words; and as well, and more subtle still, the texture in the spoken word which is an indication of a man's character and his feelings—the emotional content to him of what he says.

The general public may not be consciously aware of voice-cast, but any member of the public does react to it strongly and in conformity with the truth underlying it whenever he hears talk in which the voice-cast is definite. In other words it is an aspect of truth which the written word can never reproduce. Knowledge of this public reaction to it is what drives broadcasting producers to such lengths in features and documentaries to obtain the actual, both in persons and things. It is not wholly inconceivable that it might be of some help to the police, and to juries, and to judges, on occasion, in their difficult task of trying to assess the truth.

This and That

From time to time, and particularly recently, the lurid and detailed reporting of the evidence in criminal trials in the Sunday newspapers is criticised. On the face of it the criticisms seem to have a good deal of justification, some newspapers' treatment of recent murder trials has been painful and horrific, revolting to adults and perhaps harmful to any children who might see the papers concerned. Indeed it is partly to counteract the sensational reporting of crime that papers like this journal exist. An analogy has been drawn with divorce cases in which reports of the evidence are forbidden by statute. It is a difficult matter, but I feel sure that any attempt to censor the reports of criminal proceedings from moral or other motives would be disastrous. The public can only be sure that justice is done when all the facts are before it. The private lives of the unhappy people involved in the divorce court come into a different category; criminal cases deal with the liberty of the subject and there should be no restraint, beyond what is necessary for the protection of the prisoner, on reporting the facts. After all no one is compelled by law to read the " Sunday . . . " or even to have it in his house; although it appears to have a large circulation among serious-minded practitioners and has even been referred to affectionately in the Temple as one of the " trade papers." It has even been suggested that judges read it to discover what their brother judges have been doing during the week. . . .

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Christmas is over, a season when it is said that the police are apt to turn a blind eye on certain offences, when county court bailiffs are said to avoid serving eviction orders and when

150 boys on probation at London courts have been taken to the Ice Pantomime. Although I think the last item of news entirely admirable and encouraging there may be some doubt as to whether the Ice Show was the wisest choice. At a time when every form of public entertainment, from Shakespeare to Grand Opera, seems to be mounted on skates it would be a pity if the youth of London grew to expect the same dramatic convention of the courts. A somewhat depressing spectacle could, no doubt, be devised and entitled the "London Sessions on Ice," but on the whole both pantomimes and police courts do better on dry land.

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After Christmas come the sales and with them those strange, respectable ladies from the country who come to London to see their dentists and do a little shopping and tragically end up in a West End police court for taking something from a counter without paying for it. They always have money and sometimes have no earthly need of the things they take. One recently stole a number of children's clothes, although she was a middle aged, middle class woman who had never had a child. These cases, the basis of which is surely medical, deserve, and sometimes get, sympathetic treatment.

* * * * * *

The parking laws have made criminals of us all. I have heard of a man who avoided, with complete lack of conscience, the natural consequences of leaving his car in the street. Coming out of his office he saw his parked car being regarded with interest by a zealous constable. Without hesitation he took a 'bus to his club and from there telephoned the police and reported the car as stolen. Within an hour the police rang him and told him where it had been left by the non-existent thieves; nothing was said of the parking offence. If this never happened it is, all the same, a pleasant thought.

"GEOFFREY LINCOLN."

Aspects of Forensic Science

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Introduction

Forensic Science may be defined as science applied to the interests of justice. The security of the citizen is largely determined by the detection and punishment of crimes directed against his person and his property. The function of forensic science is to assist the court to determine whether or not a person is guilty of the crime with which he is charged.

[The major crime is murder and from the earliest times the two main methods of killing appear to have been, and still are, by the use of (*a*) weapons, (*b*) poisons.]

It will be apparent that with the development of civilisation there has been a very considerable change and augmentation of the resources of the criminal, not only in weapons—from bludgeon to sheath knives and firearms, but also in poisons from snake venom and poison pot to toxic chemicals. The technique of the criminal has also undergone marked development. In fact, in many major crimes of today there is evidence of scientific skill and knowledge on the part of the criminal.

TOXICOLOGY

Early history records many cases of death by criminal poisoning, and this in turn led to the production of alleged antidotes. Thus Sir William Wilcox (1924) records that in the first century B.C., Mithridates conducted toxicological experiments on condemned criminals and other persons who were in the way; he also invented what he believed to be a universal antidote containing no less than thirty-six ingredients. He thus became so immune to poisons that, wishing to commit suicide, was compelled to ask a mercenary to kill him with his sword.[1]

Poisoning became a fine art, all manner of plant extracts were tried in the hope of finding more and more potent poisons, the antidote of which was not known. Political murders by poison developed to such an extent that it became the practice of kings and other high personages to protect themselves by having " tasters " of both food and drink, the procedure being to remove a reasonable portion of the food or drink and consume it in the presence of and immediately before consumption by the person or persons to be safeguarded.

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[1] *Cf.* A. E. Housman, *A Shropshire Lad*, "Mithridates, he died old."

Poisoning in England was not as prevalent prior to 1500 as on the Continent, nevertheless, it did exist and it is recorded that Henry VIII ordered all poisoners to be boiled to death. Nevertheless, criminal poisonings developed fairly rapidly and became quite common up to the nineteenth century.

Although medicinal and toxic properties of many extracts of plants, etc., were known, true scientific knowledge was lacking and the real, active ingredients unknown. Thus, the methods of diagnosis of poisoning were very limited, depending mainly on observations before and during illness prior to death, and later, together with post-mortem appearances.

Thus the scientific investigations relating to poisoning cases were undertaken by qualified medical men and a field to be known as Forensic Medicine or Medical Jurisprudence developed.

The development of investigations into poisoning cases (toxicology) was in some measure controlled by progress in modern chemistry and in particular the discovery of reliable analytical methods. These developments ran parallel with developments of forensic medicine.

In addition to poisonous plant extracts, poisons of mineral origin containing arsenic and mercury came to be used, but scientific detection in the organs was delayed until the beginning of the nineteenth century. Thus we have the discovery of arsenic by Scheele (1775) hydrogen cyanide (prussic acid), the Marsh Test for arsenic 1836. The importance of the degree of absorption of arsenic, its detection in the alimentary tract, and in the organs of the body were first indicated by Orfila.

System of chemical tests

The first attempt to devise a system of chemical tests in Britain is indicated in a *Treatise on Poisons* by Christison, 1829. The famous pioneer of Analytical Chemistry, Fresenius, in conjunction with Babo devised a scheme for the search and detection of *mineral* poisons, including methods for the destruction of organic matter, such as viscera, prior to analysis. Up to this time little or nothing in the detection and identification of organic poisons by chemical methods was known, medical history and post-mortem observations being the principal means of detection.

In 1850, however, Stas described a process by which alkaloid poisons could be extracted from viscera, and, from the extract, evidence of the alkaloid obtained. This method was further improved by what is known as the Stas-Otto process. This latter method is the basis of a method in use today.

A definite advance in the methods of detection of poisons (toxicology) was indicated by the appearance of *Principles and Practice of Medical Jurisprudence* by Taylor (1848), followed by his *Handbook of Poisons*, 1848. Taylor was later appointed Home Office Analyst.

Taylor's *Principles and Practice of Medical Jurisprudence* became a fundamental reference book, not only by scientists, but by those engaged in criminal proceedings in the courts. It has, of course, been repeatedly revised and kept up to date by Sir Sydney Smith and collaborators, and is now in the tenth edition.

With the development of chemistry, modern medicine has become an applied science and its progress is very closely interlocked with the progress of chemistry. The chemist has produced many products which have proved of considerable value in medicine. Unfortunately, many substances which have medicinal value when taken in prescribed doses, have also toxic properties, and if taken in excess may prove fatal.

Until comparatively recently the systematic application of science to investigations relating to crime seems to have been directed to murder or more general offences against the person. It seemed quite natural that such investigations should have been undertaken by qualified medical men, but with the rapid development of chemistry, which brought with it a substantial increase in the number of potential poisons, investigations into poisoning cases, and in particular the identification of the poison and its distribution in the body, passed from the medical man to the chemist.

A few medical men having a strong forensic bias had dual qualifications—medical and chemistry—but almost invariably one or other predominated. Thus, such men as Stevenson, Wilcox and Roche Lynch were official Home Office Analysts holding the dual qualification, whilst Webster, in a similar capacity had no medical qualification. Although much progress has been made in the application of science in the detection of major crimes, such development in this country tended to become individualistic, and in certain individuals the tendency to be regarded as " oracles " existed, which is most undesirable.

An organised system for dealing with scientific inquiry into major crime seemed to be lacking.

FORENSIC SCIENCE LABORATORIES

Towards the end of the nineteenth and the beginning of the twentieth centuries attention was directed to the widespread adulteration of foodstuffs. In 1872 it became compulsory for local authorities to appoint a public analyst, but the qualifications of the public analyst were undefined. It was not until 1900 that proof of ability in analytical chemistry was required.

The primary function of the public analyst to a local authority is work relative to the purity of foods and drugs, and such work would on occasions necessitate his giving evidence in a court of law. Gradually the local public analyst often came to be regarded as the local scientist and was called upon to give assistance in many problems requiring scientific investigation; one of the commonest types of such investigations being those relating to crime. He might be called upon to make toxicological examinations, to identify stains, and to examine various exhibits as required by the local police. Thus, many public analysts also functioned as forensic chemists. Some showed marked lack of interest in this type of work; they examined the materials submitted in a routine sort of manner, just as they would a sample of foodstuff, and issued a purely formal report without any indication of the significance of the results in relation to the case as a whole. It was thus often left to the police to try to determine the significance of the results in relation to other evidence. A few public analysts showed considerable interest and exhibited marked ability in the forensic field. Others again developed limited fields of forensic work with such success that they came to be regarded as experts in a particular field. Ainsworth Mitchell, a consulting chemist, focussed his attention on the scientific examination of documents, and made a comprehensive study of the chemistry of inks, with the result that he became an outstanding authority in this field.

In the past, however, there was no organised study of the sciences in relation to crime although individual scientific workers who had made themselves specialists in limited fields were, on occasions, called upon in a consultative capacity in certain limited types of cases.

Many European countries and the United States have made a wider use of science in criminal investigations than existed in this country. In Egypt the Government established laboratories in Cairo. At the outset forensic medicine played the predominant part; developments in toxicology and the application of other sciences followed. The department soon established a reputation, not only as an investigation centre, but in some measure as a training centre for persons specially interested in forensic problems. Glaister and Smith after a spell at Cairo returned to establish strong schools of forensic medicine in the Universities of Glasgow and Edinburgh. They have further enhanced the prestige of forensic medicine in Britain by the publication of works which are now accepted in the courts as reliable works of reference.

The police are the primary investigators in any alleged criminal offence and therefore any comprehensive system must include facilities for instruction of and collaboration with the police.

An advisory committee, presided over by Lord Trenchard (1936) considered the application of science in the investigation of crime and in their report made the following recommendations—" The organisation within the police service of a comprehensive laboratory system for bringing the resources of science to bear upon the investigation of crime is, we are satisfied, a development of immense value and should be pressed forward without delay."

A Home Office Committee on detective work and procedure, reporting in 1938, considered the application of science to the investigation of crime and the establishment of forensic science laboratories. It was realised that one central laboratory would not suffice, for one such laboratory could only serve adequately those police forces within easy reach of the laboratory. In quite a number of cases speed of service is of considerable importance. In the days when a criminal had to travel on foot, by horse, or perhaps on a cycle, his movements from the scene of his crime were limited, and also the area of search. Today, his movements from the scene are facilitated by motor-car or even aeroplane. It may be recalled that in the case of *R.* v. *Hume* (1949) an aeroplane was used in an attempt to dispose of the remains of the murdered man, Stanley Setty. The remains were contained in parcels and it was the apparent intention to disperse and dispose of the remains at sea.

A scheme designed to put into effect the recommendations of the committee was devised by the Home Office, largely by the personal efforts of Sir Arthur Dixon and his colleagues. The scheme was to divide the country into a number of regions, each of which is served by a laboratory. In selecting the actual sites of the several laboratories consideration was given to the prevalence of crime, *i.e.*, they were situated in "crime areas." These laboratories were to be equipped with the most up-to-date apparatus and staffed to cover investigations of the more general types.

Work of the laboratories

It was envisaged at the outset that the work in each laboratory would cover a very wide field, including for example:—

Chemical analysis, micro-chemical analysis including toxicological examinations; also spectra-graphic analysis including absorption spectra, etc. More recently identification by X-ray diffraction has been introduced.

Various classes of work on documents and inks.

Comparison work applied to the fine details on tools and instruments, and materials adhering thereto, with marks and material recovered from a body, object or scene.

Identification and comparison of marks on or produced by weapons with marks on bullets, cartridge cases and/or material of contact.

Comparisons and identifications by microscopy, including comparison and identification of hairs, fibres—including natural and synthetic textile fibres—plant fragments, and all manner of fragments both organic and inorganic.

Tests for blood—both human and animal, including identification of the fundamental blood groups; tests for semen; identification of spermatozoa, parasites, etc.

Pathological work of various kinds including the conduct of post mortems.

Photographic work including micro-photographic, ultra-violet, infra-red and X-ray, such work being of considerable value for court demonstration, etc.

This initial scheme provides for a wide range of scientific investigation, some of which will be of a routine character.

In some of the problems encountered in investigations relating to criminal offences, highly specialised knowledge is required. To attempt to staff and equip laboratories for all contingencies would be unreasonable and uneconomic. Such contingencies are provided for by the utilisation of not only other Government laboratories, including research laboratories, but also the facilities afforded by the research and technical laboratories of many industries. The willingness with which industrial organisations have placed at the disposal of the director of a regional laboratory any special scientific resources they may have, has materially increased the efficiency of the laboratory.

The scientific departments of the universities and the individual specialist can be pressed into service when required. Thus it becomes possible for a director to bring to bear on a criminological problem the scientific resources of the country.

In the fifteen years of forensic science laboratories, very considerable advances have been made in forensic science, forensic methods and technique.

To be efficient in forensic science ability to do and test is not enough. It is often necessary to plan and devise methods to suit a particular problem and correctly interpret the results. In the more complex cases the correlation of the results for the presentation of as complete a chain of evidence as possible is essential.

Hitherto each member of the team has been working more or less independently, the chain may not be complete; a connecting link must be constructed correlating the conclusions reached in the various branches; possibly further experiments may be required, and on occasions additional exhibits called for in order to complete the chain. The interpretation of data often calls for restrained imagination on the part of those concerned and it is often in this final phase that the ability of the director of the scientific investigations is exercised to advantage.

A natural result from the establishment of this range of forensic science laboratories has been that a considerable amount of scientific evidence has been given in the courts, particularly in criminal cases.

Although most of the scientific examinations carried out arise from police investigations the results, which are in the main factual, are given irrespective of whether they assist prosecution or defence; in short, the evidence arising from the laboratory examinations is evidence to assist *the court*.

In course of time the senior scientific staff acquire a very considerable background or reserve from which they can draw, and thus become experts in the forensic field. As such they acquire considerable experience in the courts, and a technique in giving their evidence in a simple concise manner, and in many cases in non-technical language which can be followed by magistrates and juries having little or no scientific background.

It will be apparent that the primary service of the laboratories will be to the police. The work of the laboratory may be regarded as that of an independent investigator irrespective of whether the results are in favour of prosecution or defence. In fact, on occasions the results may indicate to the police, "no case."

In order to ensure the maximum service, the staff of the laboratories have another function, that of instruction to the police forces, and in particular to the detective staff. Such instruction encourages scientific outlook; it indicates the range of service which the laboratory can give and the method of taking and preserving of materials for examination. Close co-operation between the laboratory and the officers "in the field" is essential for success. Today, general instruction in forensic science is included in the training courses of detective police officers.

The influx of scientific evidence in the courts was not without effect on the legal profession. Those acting for the prosecution welcome it, but those acting for the defence found the scientific evidence a difficult and often an impossible barrier to surmount. The barrister of today, if he is to be successful in the criminal courts, must have some knowledge of the fundamentals of forensic science. In Scotland some instruction in forensic science is included in some of the university law courses, and such instruction could with advantage be included in such courses in this country.

Quite recently instructional courses have been organised for magistrates and here again such courses often include some general instruction in forensic science.

Although, as already indicated, much of the work of the laboratory comes from the prosecution side (police), the factual reports are available to the defence, and in quite a number of cases has led to a plea of guilty. Even the hardened criminal is beginning to realise the significance of scientific evidence and has confessed to a crime when confronted with the laboratory findings.

A Day in a Police Court

By A. E. Jones
Magistrates' Clerk

The series of which this is the second instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Preparations

Mr. Frell, the clerk of the court, sat down at his desk and, as was his habit each morning, carefully filled his fountain pen. By the time he had done this Sergeant Chumbleton and Sergeant Quing were at his door with the charge sheets and summonses. No one could foretell exactly what legal points might arise in the day's work but there were certain obvious precautions to take. The clerk went quickly through the charges and summonses checking that they were correctly worded, that none of the prosecutions was out of time, that the matters complained of were within the jurisdiction of the court, that he knew the extent of the powers of the magistrate in each case and whether it was triable at assizes, quarter sessions or in the magistrates' court.

Correspondence

Having done what he could to prepare for any ambush the law might lay for the court that day Frell turned his attention to the letters which Miss Webercourt brought him. His mail formed a fairly constant daily pattern. There were letters about summonses from defendants who were apparently under the impression that they could conduct their cases by correspondence; requests—legitimate, doubtful and impossible—for details or copies of the jealously guarded records of the court; and enigmatic scrawls from separated spouses and unmarried parents sketching difficulties or changes of circumstance that had arisen in connection with a magistrate's order.

In the answers he dictated to Miss Webercourt, Frell had to be careful not to misrepresent the law, but at the same time he had to remember that his statements of the legal position must be intelligible to his lay correspondents. This morning's post included two communications to which the clerk sent no reply. The first, addressed to " The Superintendent " read " Dear Sir, Why isn't something done about Ted Baker who lives at 43 Holly Street. He is a well-known receiver of stolen goods and as women their every night. The noise they make keeps everybody awake. He allso takes bets in the Red Lion yours truly, A Neighbour Who Knows." The second was a sample of a kind of "fan mail" only rarely received by the magistrate. It was a postcard addressed to "Alick Sutterthwick, Esq., J.P.," with, on the reverse, "Call yourself a justice of the peace. There will be no justice so long as you are on the bench and no peace in England either. Fancy fining a poor old man for throwing water over a wicked landlady which I never did because the pail was too heavy for me to lift with my arms all crippled with rheumatism. And that Mrs. Roberts no better than a brothel keeper. I pray every night that God will make you see the error of your ways. George Westerling."

Frell remembered the case of George Westerling and the defendant himself, half crazy, half humbug, outfacing overwhelming testimony with senile obstinacy and paranoic self-righteousness. The affair might become with him an obsession which no fear of consequences could control. The clerk sent for Inspector Campting and handed to him the postcard and the letter from the neighbour who knew. He doubted whether the latter contained anything useful to the police, but a warning visit from them to George Westerling might be a wise precaution.

Informations—search for stolen property

Inspector Campting's departure from the clerk's room was followed almost immediately by Sergeant Quing's second entrance. The Warrant Officer brought two applications for warrants. In the first a search warrant was asked for in respect of stolen property. Frell was familiar with the usual statement of a police officer in such cases that on information which had proved reliable in the past (in plain English, a copper's nark) he verily believed that certain goods would be found in a certain place. But this application was on different lines and its unusualness brought a somewhat dubious look to Frell's face as he read it. It was signed by a detective sergeant who deposed "on the 23rd day of this month Mrs. Ray Gold was given by her husband as a birthday present a diamond ring valued at £250. Samuel Harris, who is an acquaintance of the Golds, was one of the few persons who knew of this. Mr. Gold is managing director of a clothing manufacturing company and was at his business premises all day on the 23rd. Mrs. Gold went shopping in the afternoon, leaving the ring in a drawer in her bedroom. As was her custom, she left the key of the front door in the lavatory at the back of the house in case her daughter got home from school before her return. Later that evening Mrs. Gold discovered that her ring was missing. The key had been found in its usual position in the lavatory and the premises bore no sign of forcible entry. Harris, as a friend of the family, may well have known where Mrs. Gold was in the habit of leaving the street door key when she went out. He has recently been frequenting a billiard hall which is well known to the police as a resort of thieves and receivers. Though he is known to have been financially embarrassed for some time past, he has since the 23rd been telling persons from whom he has borrowed money that he is going to bring off a big deal very shortly and will then be able to pay his debts. Police confidently expect that if a warrant is granted the missing diamond ring will be found at Harris's address."

Was the statutory requirement of "reasonable cause to believe" that stolen goods were on the premises satisfied on these facts? Frell wondered. He felt that a warrant for the arrest of Harris on a charge of larceny would not have been justified. Mr. Sutterthwick would have to decide whether the circumstances were strong enough for a warrant to search the man's home.

False pretences

The clerk turned to the second information. It was laid against one, Joseph Miller, over a matter of £180 belonging to a Mr. Carter. The police could not arrest him without a warrant because he was not accused of the felony of larceny but of the misdemeanour of obtaining by false pretences. The statement signed by Harry Carter related that he had been a packer up to the time he became involved in a street accident. The law gave him a sum of money in place of his leg, but he had to look for a new job. Prospects seemed bright when he read in the advertisement column of the local newspaper "PARTNERSHIP offered in handbag manufacturing business to gentleman willing learn trade and put up small capital sum for development purposes." He wrote to the box number given and received from Mr. Miller an invitation to discuss the matter at the firm's premises. At the interview Carter was shown a workshop containing some benches, tools, leather and a man apparently making handbags. Miller and Carter then returned to the office where the former outlined his proposition. He had a good connection, he said, and a good name in the trade but he was in a small way and he could not make it bigger without machinery. With machinery the output and profits of the firm would increase enormously. Unfortunately all his capital was already in the business. Hence the opportunity offered to someone else with a bit of money and plenty of enterprise. That someone else would be taught all that Mr. Miller knew about the trade, and the trade was, he pointed out, one of the few in which the loss of a leg made no difference. Fresh blood for the firm to the extent of £500 was required from whoever grasped the chance, and Mr. Miller intimated that he had had several replies to his advertisement. In return for the capital contribution the new partner would not only be taught his business but get a "guaranteed drawing of £5 per week" and a quarter share of the profits.

After this business-like conversation Mr. Miller permitted himself an admission of human feeling. He prided himself that he was a judge of character; he made up his mind quickly about a man and was not often proved wrong. He spoke no more than the truth in this one particular. He freely confessed now that he had taken a fancy to Mr. Carter's style and he was willing to give him first refusal of the offer, in preference to the other applicants. But he did not want to rush Mr. Carter into a decision. He wanted a partner who was going to stick to the business because he liked it, not one who would find he had no real interest in it. Mr. Carter should make sure he was satisfied before he embarked on the venture. He could, if he liked, work at the trade for a month while he was making up his mind. Mr. Miller would teach him and pay him £5 a week during the month.

Mr. Carter accepted the suggestion gratefully. He began his study of the craft of handbag making next day; Mr. Miller kept him busy; he found much to learn during the first week and had little time to look about him. When he drew his £5 at the end of the week Mr. Miller said he would be able to show him the firm's books next week. In the meantime he took Mr. Carter into his confidence. He had heard of some suitable machinery which could be acquired for a mere £200. It seemed a crying shame to let the bargain slip. But the last thing he wanted was to hurry Mr. Carter into a decision. With this in mind he had thought of a little business proposition which would not tie Mr. Carter irrevocably to the firm, but which would profit him whether or not he joined it eventually. Mr. Carter was to lend £200 and at the end of the four-week trial period he could either have it back with £10 interest or be allowed to count it as £250 capital in the firm, according to whether or not he decided to become Mr. Miller's partner.

Mr. Carter thought this offer over, but there was not much time because Mr. Miller said it was urgent to purchase the machinery before someone else snapped it up. Not without some misgivings Mr. Carter finally paid over his £200 and got in return an acknowledgment of its receipt and of the agreed terms. Mr. Miller signed over a 2d. stamp to make it legal, as he remarked.

After that Mr. Carter did not see much of Mr. Miller in the workshop. He vouchsafed that he had been too late for the machinery snip and apparently he was devoting most of his time to prospecting for another bargain. At any rate he was out quite a lot. During these absences Mr. Carter got a chance to chat freely with the other man employed there. It then came out that he also was a mug. He had been induced by Mr. Miller to hold his tongue during Mr. Carter's first week on the promise that he would be repaid out of what was squeezed from Mr. Carter. As he had received no part of the latter's £200 he was now very communicative. The two men decided to see what would happen at the end of Mr. Carter's trial period. The £5 a week was paid regularly although there seemed very little work to do now that Mr. Miller was away so much. When his time was up Mr. Carter asked for the return of his loan. Mr. Miller did not object; neither did he repay. Later he explained that unexpected financial difficulties had arisen in the business. Mr. Carter's subsequent demands were met by an inexhaustible supply of variations of the same theme. The firm of solicitors to whom Mr. Carter took his troubles were no more successful with their hints of further action. Finally they drafted the information on which Mr. Carter now based his accusation that the £200, less the £20 he had received as "wages," had been obtained from him by false pretences with intent to defraud. A short supporting statement from a detective sergeant showed that Mr. Miller had acquired the handbag manufacturing business only three months previously and was not now trading at the premises in question.

What was the false pretence here? Frell asked himself. There was a profusion of statements from Mr. Miller's lips about affairs which lay in the future, but was there any definite misstatement of the then existing position? Machinery might well have been available to buy at a bargain price and if it was not bought that amounted only to a broken promise. Did Mr. Miller's representations about his business exceed what was allowable as commercial optimism? Could that business be justly termed a mere sham? Those were questions for the magistrate's decision. The clerk picked up the two informations and went with them into Mr. Sutterthwick's room. It was 10.20; in ten minutes time the magistrate would be taking his seat in court.

In the magistrate's room

Mr. Sutterthwick had just finished seeing Thorburton. The probation officer had come to ask for directions in the case of Alfred Salter, a probationer of six weeks' standing who was now in an honest job again and apparently progressing satisfactorily except for the fact that he would not report himself to the probation officer as prescribed by the court order.

"I shouldn't have put this young man on probation if I'd thought he could be safely trusted to make good on his own," the magistrate had said. "You must take a summons for breach of probation." Mr. Sutterthwick believed in dealing firmly with offenders who responded to leniency by further indiscipline. The summons would probably bring this defendant post haste to Thorburton's office with a promise to attend regularly in future. A small fine for the breach could, if necessary, be imposed to emphasise that all conditions of the probation order must be observed during the remainder of its currency. Mr. Sutterthwick felt it was unlikely he would have to resort to the ultimate sanction of passing sentence for the original offence.

He now turned his attention to the two informations. He listened to the clerk's comments on their technical merits and then read them through himself. He was not long in coming to the conclusion that he was justified in issuing a warrant to search Mr. Harris's house for Mrs. Gold's ring. Mr. Carter's investment in Mr. Miller's business gave him more trouble. Finally he said "I think this is more than a civil case. I'm prepared to hold that these facts taken as a whole support an inference that the business wasn't a bona fide one, but just a façade for the swindle. It would be up to the defence then to prove that it was a genuine business but had misfortunes in the ordinary course of trade."

"I fancy, sir," objected Frell, "that what the prosecution are really after is to use us as a debt-collecting agency. They didn't go straight to the police; they tried negotiations first."

"Well, I shouldn't worry if one of the incidental effects of a criminal prosecution was to frighten a rogue into handing back his plunder" said Mr. Sutterthwick. "But I'm not going to allow this case to be withdrawn because the parties come to some private financial arrangement. I should refer it to the Director of Public Prosecutions if that was tried on. This court isn't going to be made a bargaining counter."

Frell had still a point to raise. "It occurred to me, sir," he said, "that, as the prosecutor's solicitors have been in correspondence with the defendant recently, his address must be known, and so a summons might do instead of a warrant."

"Yes, that's true," agreed Mr. Sutterthwick. "It isn't a strong case, I know, and if we can get Miller before the court without a warrant it's probably better to do so."

There came a knock on the door and Sergeant Quing entered: "The court is ready, your worship," he said in a manner oddly reminiscent of a butler announcing "Dinner is served, my lord." Mr. Sutterthwick got up to go. "There doesn't seem to be much in the list," he said casually to Frell.

"No sir. They look a very ordinary lot of cases," replied the clerk.

Australian Police Notes

Peeping Toms

In at least some parts of this country one senses a certain amount of satisfaction among police resulting from the Victorian Full Court's decision in *Haisman* v. *Smelcher* (not reported) on our old enemy the Peeping Tom.

Because of the absence from the law of most States of a statutory bar to the practice of entering into yards and gardens at night to peer through carelessly arranged curtains, it has long been felt that the alternative punishments possible, either to have the offender bound over to keep the peace under 34 Edw. 3, c. 1 (the Justices of the Peace Act, 1360), or fined for the very minor offence of trespassing, were most inadequate as deterrents.[1]

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[1] It should however be remembered that a person may be bound over to find sureties under the [English] Magistrates' Courts Act, 1952, s. 91 and if he fails to comply with the order he may be committed to custody for a period not exceeding six months or until he sooner complies with the order. See *Stone* (85th ed.) 106. [Eds.]

Haisman's case brings the Peeping Tom within the definition of " rogue and vagabond " and he now faces the prospect in Victoria of two years' gaol, a penalty that should scare off all but the real enthusiast.

Section 72 of the Victorian Police Offences Act, under which Haisman was charged, declares to be a rogue and vagabond any person who (among other things) is " found without lawful excuse (the proof of which such excuse shall be on such person) in or upon any dwelling . . . or in any enclosed yard garden. . . ."

The Queensland Vagrants, Gaming and Other Offences Act has similar wording and a six months' penalty, but New South Wales and Western Australia have for the words " without lawful excuse " the words " having any unlawful purpose "; the penalties are six months' in this State and twelve months' in Western Australia. South Australia's Act uses both terms, " for any unlawful purpose or without lawful excuse," with, again, a six months' penalty.

In the English decision in *Re James Joy* (1853) 22 L.T. (Newsp.) 80, an " unlawful purpose " was held [2] to mean a purpose to commit a crime, which excludes the Peeping Tom; and *Ex p. Haywood,* Add.Dig. 349; 12 Austn.Dig. 405, decided that the particular purpose should be specified with sufficient particularity to enable the court to determine if the purpose was unlawful within the meaning of the Act. Obviously, the New South Wales section is inapplicable when dealing with a peculiar-minded individual whose intentions are to satisfy some strange perverted urge, perhaps not easily understood by a normal male adult, but nevertheless not criminal.

The argument by counsel for Haisman appears to have been, essentially, that if the purpose of the person's presence is not expressly forbidden by statute his excuse for being there is lawful. Fortunately for Victorian women who, perhaps because of the kindness of their State's climate, may be somewhat careless of curtains and blinds when dressing or undressing, this proposition was rejected by the Full Court which held that an admission of conduct which could result, by the appropriate proceedings, in an order binding the accused over to keep the peace, cannot constitute a lawful excuse.

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[2] As to the [English] Vagrancy Act, 1824, s. 4: every person being found in or upon any dwelling-house, warehouse, coach-house, stable or outhouse, or in any enclosed yard, garden, or area for any unlawful purpose. [Eds.]

Police in New South Wales are looking at the wording of the Victorian and Queensland Acts with some envy, for *Haisman's* case does not apply in this state. In order expressly to provide for the Peeping Tom, Queensland recently, and unnecessarily it now seems, added an amending section to its Criminal Code in the following terms:

> "Any person who enters or is in or upon any dwelling-house of another or the curtilage of the dwelling-house with intent indecently to insult or offend any female inmate of that house, shall be guilty of an indictable offence."

The penalty is imprisonment for one year with or without a whipping. That state seems now to be doubly armed to combat this offender.

There is some reason to believe that Canada might look at this decision with interest. It seems that in *Frey* v. *Fedoruk* ([1950] 3 D.L.R. 513), discussed in the *Canadian Bar Review*, Vol. 28, p. 1023, the Canadian Supreme Court held a Peeping Tom not to commit an offence and therefore immune from arrest without warrant. In delivering the court's judgment, Cartwright J. held that acts likely to cause a breach of the peace are not criminal offences merely because they have this tendency, but are no more than grounds for having the person committing them bound over to keep the peace and be of good behaviour. There was a second argument, that conduct of this kind is highly and plainly injurious to the people and will, if not punished by law, lead people to take the law into their own hands, and therefore a breach of the Queen's peace. It had been suggested that Her Majesty's judges have the power to declare anything which is injurious to the public to be an offence. This also was rejected by Cartwright J. in these terms:

> "In my opinion, this power has not been held and should not be held to exist in Canada. I think it safer to hold that no one shall be convicted of a crime unless the offence with which he is charged is recognised as such in the provisions of the Criminal Code, or can be established by the authority of some reported case as an offence known to the law. I think that if any course of conduct is now to be declared criminal, which has not up to the present time been so regarded, such declaration should be made by Parliament and not by the courts."[3]

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[3] Compare *R.* v. *Newland* [1954] Crim.L.R. 51, where the crime of public mischief was considered by the Court of Criminal Appeal. [Eds.]

I hope I have not painted a picture for my overseas readers which exaggerates the Peeping Tom position in Australia. Really, we have very little of it in comparison with many other types of offences, but when a persistent peeper pops up in a suburban residential area it puts a severe strain on the strength of the police available for night duty.

Homosexuals

On a couple of occasions in recent months our Press has published accounts of prosecutions in England of males for "persistently importuning men." Earlier on we felt that there was an effective way of dealing with the homosexual in New South Wales by charging him under the Vagrancy Act, s. 4 (2) (*o*), which provides that: "Whosoever—being a male person—

(i) knowingly lives wholly or in part on the earnings of prostitution; or

(ii) in any public place solicits or importunes for immoral purposes.

shall be liable to imprisonment with hard labour for a term not exceeding six months. . . ."

We have been disillusioned.

In a Supreme Court decision on August 4, 1953, when hearing the appeal of one Langley against conviction for this offence, it was held that the soliciting or importuning by the male must be for the purpose of prostitution, which involves a female, and is inapplicable to the male homosexual.

As police, we are now wondering what is the best remedy remaining for what was recently described in a public address by our Commissioner as the "ever-growing cancer of homosexual perversion," and it seems that a charge under the Crimes Prevention Act (N. S. W.) of inciting a person to commit the crime of indecent assault or buggery is the most practical solution offering for our problem. The only alternative is a charge of offensive behaviour carrying as a penalty a maximum fine of £5.

It seems that police in England undoubtedly have the advantage in handling this fellow if they can charge as our newspaper accounts suggest.[4]

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[4] The comparable section in the [English] Vagrancy Act, 1898, is section 1 (1). It is for these purposes the same as the New South Wales Act, except that the offence in subsection (ii) is "persistently soliciting or importuning." The offender is to be deemed to be a rogue and vagabond and he may be sentenced to six months' imprisonment. A male person may be convicted of soliciting or importuning other male

" Mr. One-by-One "

This month saw the finish of one of our longest Commonwealth-wide searches for an unknown but active criminal with the conviction and sentencing to seven years' gaol of a forger of Commonwealth Treasury ten-pound notes named Edward Charles Windeyer. The first forgery was detected in 1949 and from that date until September of this year the spurious notes were put in circulation in New South Wales, Queensland, Victoria and South Australia.

Because the notes were uttered singly and never more than two or three on the same day, this chap was given the name of " Mr. One-by-One " by our papers. When ultimately run to earth in a Glebe (Sydney) residential area, the complicated photography he carried out with but the most elementary of equipment was an eye-opener to those who expected that, when discovered, the offender would be found supplied with an elaborate printing press. His equipment was in fact little more than a boy might buy for his first venture into developing and printing snapshots, but the way he used it approached genius.

Suspicion was first directed to Windeyer following his chance stopping by two young plain clothes policemen at King's Cross one night in June last. They " ran the rule " over him and found the sum of £9 19s. 0d. in two separate pockets. After verifying Windeyer's name and address they let him go. Making the routine check with the fingerprint index they learnt that the man they had spoken to had been sentenced to two years' imprisonment in 1947 on six charges of forging and six of uttering forged totalisator tickets.

After the possibility of Windeyer's being either the forger or passer of the forged notes was discussed with senior detectives, it was decided to put a tail on him. He was kept under police surveillance constantly by an oft-changed squad until September 15 when he was arrested. In the meantime the detectives had followed Windeyer to a number of suburban post offices he was using to cache parcels of forgeries until he required them. He learnt that the postal authorities would hold a parcel (or letter) addressed care of a post office for thirty days before it was sent to the Dead Letter Office and by collecting and readdressing parcels before the thirty days had expired, Windeyer had an obliging

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persons and there is no real distinction to be drawn between persistently soliciting and persistently importuning: *Field* v. *Chapman* [1952] 10 C.L. 277; *The Times*, October 9, 1953. [Eds.]

custodian of his products in the person of the Postmaster-General. The detectives several times watched him rewrapping the notes whilst standing in public telephone booths and obtained possession of some of the discarded packaging.

Long before Windeyer's arrest the detectives had overwhelming evidence that he was the utterer, but were wary of acting too quickly in case he was not the forger. However, his arrest and search of his room quickly established that Windeyer was alone; his formulae in his own handwriting, materials, and a cache of the notes were found in his room.

Windeyer readily described his novel process, his journeys to other States to pass the forgeries, and other aspects of his operations in several written statements.

His defence at the trial was almost as ingenious as his work. He appeared in court wearing a coat literally torn to pieces, which he said had been damaged by the detectives who forced him to make the statements by ill-treating him. He called a leading psychiatrist who expressed the opinion that Windeyer was subnormal and incapable of carrying out the crime. His intelligence was rated as equal to a child of eleven-and-a-half years.

It is feared that the learned doctor's face went a little red when the intricate nature of the prisoner's earlier forgeries of totalisator tickets was adduced, and when reply evidence showed that he was an engineer who had applied for letters patent in respect of such matters as improvements to a carburettor, a spark plug and a razor, and had indulged in extensive experiments with cosmic rays.

It was proved beyond any doubt that the tattered coat was perfectly whole the day after his arrest and confession.

Windeyer's case showed how small a city of two million people can sometimes be. The deposition clerk called on to type the evidence on the first day of the petty sessions hearing recognised the defendant as a man near whom he had sat on numerous occasions a few years ago in our public library when the clerk was studying for his law examinations and Windeyer the ways of photographically reproducing His Majesty's currency.

"INSPECTOR."

January 1, 1954,
SYDNEY N.S.W.

Practice and Procedure

Quarter Sessions

Restitution of stolen property

Has the appeals committee of quarter sessions power to order restitution of property when the offender has been convicted of larceny by a court of summary jurisdiction and committed to quarter sessions for sentence?

The power to order restitution lies in section 45 (2) of the Larceny Act, 1916, which provides: "In every case . . . the court *before whom such offender is convicted* shall have power to award from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner." This would appear to confine the power of ordering restitution in such a case to the court of summary jurisdiction since that is the court before whom the offender was convicted. But section 29 (3) (*a*) of the Criminal Justice Act, 1948, gives to the appeals committee of quarter sessions "power to deal with the offender in any manner in which he could be dealt with by a court of quarter sessions before which he had just been convicted of the offence on indictment." This is, however, a power to "deal with the offender" and does not, in terms, cover the power in section 45 (2) of the Act of 1916 to make an order which has not necessarily anything to do with the offender as where the stolen goods are in the hands of an innocent third party. It would seem that the order for restitution is not within the power of the appeals committee unless it can be regarded as part of the sentence. In view of the doubts as to the powers of the appeals committee it would probably be better that the order for restitution be obtained from the court of summary jurisdiction before which the offender was convicted. There seems to be no reason why that court should not be invited to make an order for restitution at the same time that it makes an order committing the offender to quarter sessions.

There seems to be no time limit on the power of the convicting court to make an order for restitution and such orders can be made "from time to time" after conviction and committal for sentence and after the offender has been sentenced, as may be necessary, upon the stolen property coming to light. [The Clerk of the Peace of Denbighshire.]

Magistrates' Courts

Execution of a Means Inquiry Warrant

The Magistrates' Courts Act, 1952, although largely a consolidating statute, made a few changes in the law of summary jurisdiction, and, by substituting fresh wording for that used in corresponding provisions of repealed legislation, made it possible in certain matters to reach conclusions which would not have been justified by the former wording. This and the two following practice points are examples of the new legal aspect worn by some of the proceedings in magistrates' courts.

Section 11 of the Money Payments (Justices' Procedure) Act, 1935, provided that a means inquiry warrant might be "executed in the like manner, and the like proceedings may be taken with a view to the execution thereof, in any part of the United Kingdom, as if it had been a warrant of arrest issued under section 2 of the Summary Jurisdiction Act, 1848." Section 2 of the 1848 Act authorised the issue of a warrant on the non-appearance of a person summoned to answer an information or complaint.

Section 11 of the Act of 1935 has been repealed and replaced by section 70 (4) of the Magistrates' Courts Act, 1952, which enacts that a means inquiry warrant "may be executed in like manner, and the like proceedings may be taken with a view to its execution, in any part of the United Kingdom, as if it had been issued under section 15 of this Act." Section 15 of the new Act is obviously selected as the corresponding provision to the repealed section 2 of the Summary Jurisdiction Act, 1848; it authorises the issue of a warrant on the non-appearance of a defendant to a summons. But there is an important difference. Section 2 of the Act of 1848 covered the case of a defendant summoned on a complaint for a matter within the civil jurisdiction of the court (apart from a civil debt) as well as on information for an offence. The scheme of the 1952 Act, however, separates these two matters so that section 15 of it deals solely with a person summoned on information for an offence. It is this change which makes it possible to argue that the execution of a means inquiry warrant is now governed by provisions which did not formerly apply to it.

Section 44 of the Criminal Justice Act, 1925, authorised "any warrant lawfully issued by a justice for apprehending any person charged with any offence" to be executed at any time, and notwithstanding that the warrant was not in the possession of the constable effecting the arrest. The provisions of the 1952 Act which now stand instead of this enactment are subsections (3) and (4) of section 102; these permit "a warrant to arrest a person charged with an offence" to be executed on a Sunday and by a constable not holding the warrant at the time.

As section 2 of the Summary Jurisdiction Act, 1848, covered the issue of warrants both for criminal and civil matters, it could not be said that the provision requiring means inquiry warrants to be executed as warrants issued under that section brought them within the scope of section 44 of the Criminal Justice Act, 1925, since this was restricted to warrants issued for offences. But warrants issued under section 15 of the Magistrates' Courts Act, 1952, can only be for offences and, therefore, section 102 (3) and (4) always applies to them. It would seem to follow that, as means inquiry warrants are to be executed in like manner, they also may now be executed on a Sunday and by an officer who does not actually hold the warrant at the time.

The matter is of some interest to warrant officers of magistrates' courts, though probably they would not welcome the addition of Sunday duty to their already busy working lives. But it is an undoubted convenience if a warrant officer need take with him on his daily rounds only a list of names and amounts due, and not a large bundle of warrants for outstanding fines; it also saves these documents getting as worn and torn as they have sometimes done in the past in cases where a defaulter proved difficult to find. [A. E. Jones.]

Imprisonment in Default of Paying the Balance of a Fine

The "means inquiry" procedure introduced by the Money Payments (Justices' Procedure) Act, 1935, was superimposed on the existing Summary Jurisdiction Act provisions relating to the enforcement of fines and, not unnaturally, the two procedures did not in all matters fit together perfectly. In particular, it was not made clear what considerations applied to the fixing of a period of imprisonment following a means inquiry into non-payment of the balance of a fine due after part payment. On the one hand it could be argued that the court should regard itself as dealing only with the outstanding amount and should therefore fix the alternative imprisonment by reference to that alone. On the other hand, it was pointed out that sentences in default of paying fines were governed by the earlier provisions of the Summary Jurisdiction Acts and they gave no power to impose such a sentence by reference to a part only of a fine.

The question was not just of academic interest; there was a possibility that a defendant might be treated unfairly if the balance only of a partly paid fine was looked at at a means inquiry. For example, if he had been fined £5 and had paid £3, he would, considering solely the outstanding £2, be liable to one month's imprisonment in default of payment. But that would have been the maximum sentence which could have been awarded if imprisonment had been fixed at the time the fine was imposed. The imposition of this period of imprisonment in respect of the balance would, therefore, mean that the defendant would obtain no benefit from his part payment. To avoid such a situation some courts preferred when holding means inquiries to fix a term by reference to the original amount of the fine and then allow the statutory reduction for any part payment made.

The position has now been clarified by the Magistrates' Courts Act, 1952. Paragraph 2 of the Third Schedule to this statute reads: " Where the amount due at the time imprisonment is imposed is so much of a sum adjudged to be paid by a summary conviction as remains due after part payment, the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the whole sum." From this it follows that the balance due at the time of the means inquiry is the sum in respect of which imprisonment should be imposed, but the maximum sentence applicable is arrived at by taking the same proportion of the maximum sentence possible in default of paying the original fine that the balance due bears to the whole sum. Thus, in the example given earlier, the defendant, in default of paying a balance of £2 would be liable to a maximum term of imprisonment of twelve days, *i.e.*, two-fifths of the maximum sentence of one month which the £5 fine carried.

The proviso to paragraph 2 of the Third Schedule (*supra*) that " the maximum period shall not be reduced to less than 5 days " should be noted. The application of this might result in a defendant's not getting the full benefit of his part payments—*e.g.*, if he had paid £4 10s. of a fine of £5. The proportionate maximum imprisonment in default of payment of the balance of 10s. in that case would be 3 days, but the court would not be able to pass a lesser term of imprisonment than 5 days. Such a position might be met, if thought desirable, by using the powers contained in sections 109 and 110 of the Magistrates' Courts Act and ordering the detention of the defendant for one day within the precincts of the court or for not exceeding four days in a certified police station, if such is available. [A. E. Jones.]

The Costs of Apprehension on an Arrears Warrant

Section 4 of the Bastardy Laws Amendment Act, 1872, provided for the issue of a warrant of arrest to enforce payment of arrears under an affiliation order and enacted that after arrest of the defendant distress and commitment warrants might be issued in respect of such arrears, together with "the costs attending such warrant, apprehension, and bringing up." This section has been repealed and replaced by section 74 of the Magistrates' Courts Act, 1952, which makes arrears under an order which is enforceable as an affiliation order the subject-matter of an order on complaint. No special provision is made in this section with regard to costs and therefore the ordinary law will apply. This is contained in section 55 (1) which authorises the court to award such costs "on making the order for which the complaint is made, to be paid by the defendant to the complainant . . . as it thinks just and reasonable." Section 55 (4) goes on to make the costs enforceable in the same way as arrears when ordered in proceedings for arrears under affiliation orders or orders subject to the same enforcement procedure.

When a defendant in arrears under such an order lives out of the jurisdiction of the court before which complaint is brought, the enforcement proceedings may, by virtue of Rule 49 of the Magistrates' Courts Rules, 1952, be transferred to the court having jurisdiction where he lives—always providing his address is known. But if he has absconded without trace it may be necessary for the original court to issue a warrant for his arrest and if he is subsequently found by the police he may have to be brought from a distance, at considerable expense. If the police had incurred these costs the defendant could, under the former law, have been ordered to repay them in the event of a distress or commitment warrant being issued for the arrears. Now that costs can be awarded only to the complainant it seems clear that the expenses incurred in bringing the defendant before the court can no longer be recovered from him unless they have, in fact, been paid by the complainant.

Some police authorities were always in the habit of requiring a complainant in such a case to deposit a sum of money sufficient to cover the cost of bringing the defendant from where he was suspected to be. Most police forces, however, treated a warrant for arrears in the same way as a warrant of arrest for an offence and did not seek to recover the costs of execution from the complainant, though they might ask the court to order them to be paid by the defendant. To many people it seemed that this latter attitude to the matter was well justified, even though the proceedings concerned what is, in essence, a private debt. In many cases payment of expenses in advance to the police might be an impossibility to a woman whose complaint was that she was not getting the allowance the court considered she needed. However, it does seem now that such a requirement on the part of the police offers the only prospect of recovery subsequently from the defendant.

The matter is to some extent more of academic than practical importance because few defendants in such cases are able to pay the arrears due in full, let alone any costs; and courts usually take the view that such sums as can be extracted should go to the complainant rather than to the police. There are, however, some defendants who can pay in full and unfortunately it cannot be known in advance for certain whether or not a defendant will be found to have sufficient funds to meet all the demands which may lawfully be made on him.

Incidentally, the forms of distress warrant and commitment, prescribed under the Bastardy (Forms) Order, 1915 (as amended), still remain in the terms authorised by the wording of the Bastardy Laws Amendment Act, 1872, and contain provision for the costs of apprehension to be awarded against the defendant. But this, in the face of the wording of the Magistrates' Courts Act, cannot be regarded as an authority to make such an order unless such costs can be properly regarded as due to the complainant. [A. E. Jones.]

Case and Comment

[Reports of cases included here are prepared by C. J. ELLIS, *Barrister-at-Law* unless otherwise appears]

Arrest — *Foreign serviceman — non-payment of arrears on affiliation order*

R. *v.* BIRKENHEAD BOROUGH JUSTICES, *ex p.* SMITH[1] (Q.B., Divisional Court: Lord Goddard C.J. and Barry J.: December 21, 1953) (*The Times*, December 22, 1953).

S. applied for leave to move for an order of mandamus directing the justices to hear her application for the issue of a warrant for the arrest of W., a member of the United States Air Force. S. had applied for an affiliation order against W. He appeared at the hearing through a solicitor, and having been found to be the putative father of S.'s child was ordered to pay £1 a week, later increased to 30s., for the child's maintenance. W. failed to pay the full amount and S. applied for a warrant for his arrest for non-payment. After a number of adjournments the justices refused to issue the warrant being of the opinion that there was insufficient evidence of W.'s status with regard to the courts of this country. It was submitted on S.'s behalf that section 64 (2) of the Magistrates' Courts Act, 1952, in view of section 144 of the Army Act, allowed a visiting serviceman no less than a British soldier to be arrested for the non-payment of a civil debt exceeding £30, and as W.'s arrears amounted to some £31 the justices should have issued the warrant

Held, allowing the application, that in view of the important issues that might be raised regarding American servicemen in respect of bastardy orders, the American Ambassador and the Treasury Solicitor should be informed that the court had given leave.

COMMENTARY. The Visiting Forces Act, 1952, has no application to questions of affiliation. The Act has not yet been brought into operation. See the Editorial note on p. 75.

Section 64 (2) of the Magistrates' Courts Act, 1952, provides for the issue of a warrant of commitment (*a*) where on the return of a warrant of distress it appears that the money and goods of the defaulter are insufficient to satisfy the sums to be paid, and (*b*) instead of a warrant of distress. Section 144 of the Army Act permits the arrest of a British soldier for a debt exceeding £30.

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[1] For the applicant: *C. J. I. Cunningham* (instructed by Field, Roscoe & Co., agents for Berkson and Berkson, Birkenhead).

See Stone, 85th ed., 84, 450.

Attempt—*Gross indecency*. See R. *v.* MISKELL, p. 137.

Attempt—*Larceny—attempted entry into building*. See R. *v.* THOMAS, p. 140.

Carnal knowledge of mental defective — *Procurement* — *girl under supervision of social worker*

R. *v.* COOK [2] (Leeds Assizes: Stable J.: November 17, 1953) ([1954] 1 W.L.R. 125; [1954] 1 All E.R. 60).

P., aged 17, was certified as a mental defective under the Mental Deficiency Acts in 1951. She was not put into any institution but was placed under the supervision of a mental health social worker who boarded her out with C.'s wife at C.'s house. On three occasions C. had carnal connections with P. C. was charged with procuring a mental defective to have unlawful carnal connection with him contrary to section 56 (1) (*b*) of the Mental Deficiency Act, 1913.

Stable J., summing up, said that section 56 (1) (*a*) provided that it was a criminal offence to have sexual intercourse with a mental defective who was in an institution or out on licence, but it did not provide that it was an offence in the case of a girl placed under statutory supervision as P. was. Therefore the act of intercourse was not itself a criminal offence. To avoid that difficulty C. was charged under section 56 (1) (*b*) with the offence of procuring P. to have intercourse, but as there was no evidence that he had procured her, since he had not got P. to come into his house, nor taken her away from her mother, the jury had no alternative but to return a verdict of not guilty.

COMMENTARY. Mental Deficiency Act, 1913, s. 56 (1): "Any person (*a*) who unlawfully and carnally knows . . . any woman or girl under care or treatment in an institution or certified house or approved home, or whilst placed out on licence therefrom or under guardianship under this

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[2] For the prosecution: *A. M. Hurwitz* (instructed by R. C. Linney, Wakefield). For the defendant: *J. M. Dodson* (instructed by Carter, Bentley and Gundill, Pontefract).

Act; or (*b*) procures . . . any woman or girl who is a defective to have unlawful carnal connection . . . with any person or persons . . . shall be guilty of a misdemeanour."

See Archbold, 32nd ed., 1074

Evidence—*Admissibility—wife's evidence after nullity decree*

R. *v.* ALGER[3] (Court of Criminal Appeal: Lord Goddard C.J., Croom-Johnson and Glyn-Jones JJ.: November 16, 1953) ([1953] 3 W.L.R. 1007; [1953] 2 All E.R. 1381).

A. was married in 1934. In 1947 and 1948 he forged his wife's name to a number of cheques defrauding her bank of about £7,000. In 1949 A.'s wife petitioned for a decree of nullity on the ground of A.'s impotence and the marriage was annulled in 1951. A. was subsequently prosecuted for forgery and the prosecution called his former wife as a witness. A. was convicted and sentenced to five years' imprisonment. On appeal it was submitted that A.'s former wife was not competent to give evidence at his trial about matters arising during the subsistence of the marriage. Counsel for the prosecution admitted that had the marriage been terminated by a decree of divorce A.'s former wife would not have been competent but submitted that as there had been a decree of nullity it related back so that the parties were never married.

Held, allowing the appeal, that as impotence only made a marriage voidable, the marriage was regarded as valid until avoided at the suit of the aggrieved party. A similar incompetency to that which attached to a divorced spouse regarding matters arising during the subsistence of the marriage, attached to a spouse whose marriage had been avoided on the ground of impotence. Accordingly A.'s former wife was not competent to give evidence on matters arising during the subsistence of the marriage and as her evidence concerned a vital point in the case the conviction would be quashed.

COMMENTARY. The common law rule that a divorced wife cannot be called upon to give evidence against her husband in respect of matters arising during marriage was settled long ago in *Monroe* v. *Twisleton* (1802) Peake Add.Cas. 219. There has been no previous authority on the effect of a nullity decree. See Archbold, 32nd ed., 465 *et seq.*

See also p. 92, *ante.*

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[3] For the appellant: *J. H. Buzzard* (instructed by Registrar, Court of Criminal Appeal). For the Crown: *Maxwell Turner* (instructed by the Director of Public Prosecutions).

Falsification of accounts by a servant—*Distinction between intent to deceive and intent to defraud*

R. *v.* Wines [4] (Court of Criminal Appeal: Lord Goddard C.J., Byrne and Parker JJ.: March 31, 1953) ([1954] 1 W.L.R. 64; [1953] 2 All E.R. 1497).

The appellant, W., the manager of a shop's wireless department was indicted on seven counts of larceny as a servant, namely the theft of television sets, one count of conspiring to steal the goods with another person who pleaded guilty, and five counts of falsification of accounts. W.'s defence was that he had bought the goods. He admitted that he had falsified the accounts but claimed that he had done so in order to make it appear that his department's gross profit was greater than it actually was because he feared that if the true profit were known he would be dismissed. The prosecution alleged that he had falsified the accounts in order to cover up the thefts. The recorder directed the jury that if they were satisfied that W. was a servant and had made a false entry in the document, which was admitted, and that it was done either with the object of concealing the thefts or as said by W. to keep his job, which he would otherwise have lost, there was intent to defraud and the charge was made out. The jury found W. guilty on all the counts and he was sentenced to four years' imprisonment on each count to run concurrently. W. appealed on the ground that there had been a misdirection on the charges of falsification which had affected the jury's minds on the other counts.

Held, dismissing the appeal, that assuming that W.'s reason for falsifying the accounts was because he feared dismissal, then his employers were being induced by W.'s falsification to keep him in their service and to pay him wages by means of a false representation.

Commentary. In dealing with the falsification of accounts it is important to distinguish between an intent to deceive and an intent to defraud since the former is not criminal. The distinction given by Buckley J. is that "to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action": *Re London and Globe Finance Corporation* [1903] 1 Ch. 728, 733.

See Archbold, 32nd ed., 747 *et seq.*

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[4] For the appellant: *Leo Clark* (instructed by Registrar, Court of Criminal Appeal). For the prosecution: *R. G. Micklethwait* (instructed by H. J. Astley, Oxford).

Gross indecency—*Attempt to procure—invitation and meeting*

R. *v.* MISKELL [5] (Courts-Martial Appeal Court: Hilbery, Sellers and Barry JJ.: December 18, 1953) ([1954] 1 All E.R. 137).

M., an army corporal, spoke to a boy in a Hamburg street. They went to a café and later to a park. M. told the boy that if he came the next day he would give him 10 marks. The boy kept the appointment and M. was arrested. M. was convicted by a district court-martial at Hamburg of attempting to procure an act of gross indecency with the boy and was sentenced to 56 days' detention and to be reduced to the ranks. M. appealed against his conviction on the ground that the judge-advocate was wrong in directing that his acts were capable of amounting to an attempt and that they were only acts of preparation.

Held, dismissing the appeal, that it could not be doubted that M. had suggested to the boy that they commit acts of indecency because he told the police that "he had no intention of doing what he had suggested." M. had the intention to commit the act, and the invitation and meeting were overt acts, which when considered in the light of the surrounding circumstances were capable of being attempts to procure the boy to commit an act of gross indecency. As M.'s acts were capable of constituting an attempt, the question whether they did so was one of fact for the court-martial to decide.

COMMENTARY. "In sexual and indecent offences, it seems that a solicitation of the other party, even by letter, to agree to permit the offence is itself an attempt": Glanville Williams, *Criminal Law*: The General Part (1953), § 144, citing *R.* v. *Honor* [1918] N.Z.L.R. 510; *R.* v. *Cope* (1921) 16 Cr.App.R. 77; *R.* v. *Woods* (1930) 22 Cr.App.R. 41. See Archbold, 32nd ed., 1088.

Highway—*Dangerous driving—distinction between "wanton driving" and "wilful neglect"*

R. *v.* TELFORD [6] (Durham Quarter Sessions: W. L. Burn, Esq., *Barrister-at-Law*, Chairman: January 5, 1954).

The accused was charged under section 35 of the Offences against the Person Act, 1861, on two charges with (1) being a person in charge of a bicycle who, by wanton driving, did cause bodily harm to T., and alternatively (2) being a person in charge of a bicycle who by wilful neglect did cause bodily harm to T. The accused, riding a bicycle in poor condition with defective brakes, had collided with T. causing her to fall and fracture her skull, from which injury she subsequently died. It was contended on behalf of the accused that to convict on either of the alternate charges a standard of lack of care which, in the case of a motor-vehicle would amount at least to dangerous driving, must be proved, and that such lack of care had not been proved.

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[5] For the appellant: *Ian McLean* (instructed by Registrar of Courts-Martial Appeal Court). For the Crown: *E. Garth Moore* (instructed by Director of Army Legal Services).

[6] For the prosecution: *Norman Harper* (instructed by Swinburne & Jackson, Durham). For the defendant: *Wilfred Steer* (instructed by J. T. Proud & Son, Bishop Auckland).

The chairman *directed* the jury that the degree of negligence could not be judged by the consequences of the accident. For the prosecution to bring home either of the alternate charges they must prove a degree of lack of care which would amount to dangerous driving in the case of a mechanically propelled vehicle, but there were difficulties in drawing a parallel between the Act of 1861 and the modern Acts relating to motor-vehicles. The term "wanton" indicated a positive lack of care whereas "wilful neglect" implied something of a negative nature.

On a request for further direction, the chairman instructed the jury that the bad condition of the bicycle was, in itself, not sufficient to enable them to find a verdict of guilty on the second count, but that this, taken with other evidence as to the actual handling of the bicycle by the accused was strong corroborative evidence upon which they might find such a verdict.

The jury returned a verdict of not guilty on both counts. [Reported by E. L. Proud, *Solicitor.*]

Commentary. It seems probable that a charge of manslaughter was not preferred because it was considered that the facts would not have supported it. The charges brought here would, if proved, have carried a penalty of imprisonment for not more than two years. An alternative method of proceeding would have been to charge the accused under section 78 of the Highways Act, 1835, as the driver of a carriage since this term includes a bicycle: *Taylor* v. *Goodwin* (1879) 4 Q.B.D. 228. Under this section it is an offence "by negligence or wilful misbehaviour [to] cause any hurt or damage to any person . . . passing or being upon such highway," but the penalty involved is a fine of £10 if the driver is the owner of the carriage or £5 if he is not. An alternative charge under the same section can be laid for driving "furiously so as to endanger the life or limb of any passenger."

See Stone, 85th ed., 1071–2.

Jury—*Disagreement—direction to reconsider the case*

R. *v.* CREASEY [7] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Havers JJ.: October 19, 1953) (37 Cr.App.R. 179).

C. was convicted of criminal conspiracy. He appealed on the ground that, when after retirement the jury were unable to agree, the recorder had by his direction emphasised that they must come to a decision and had not left it open to the jury to disagree. He had said: "It is very desirable you should come to a conclusion one way or the other . . . because it only means that some other jury have got to do your work . . . all over again . . . and that is why it is highly essential that you should come to a definite conclusion. . . . It is a hardship upon all concerned if you do not . . . ."

Held, dismissing the appeal, that it would be unfortunate if anything that the court said was thought to mean that a judge could not urge a jury to try again. In the present case the court did not think that a sensible jury could have misunderstood what was said although, perhaps, it could have been put a little differently.

COMMENTARY. See Archbold, 32nd ed., 204.

Larceny—*Attempt—attempted entry of a building*

CAREY *v.* MARTIN [8] (Q.B., Divisional Court: Lord Goddard C.J., Sellers and Barry JJ.: December 4, 1953) (*The Times*, December 5, 1953).

C. having entered a yard, climbed up and broke a shop's skylight window. He did not enter the premises but ran away and left the yard. He was charged with attempted larceny. The assistant recorder considered that the breaking of the window was an act sufficiently proximate to the alleged larceny to amount in law to an attempt to steal. C. was convicted and sentenced to two years' imprisonment; he appealed.

Held, allowing the appeal, that as there was no evidence that C. had done anything towards committing larceny, the court could not find that there had been an attempt to steal. There was no doubt an attempt to break and enter premises with intent to commit a felony; but that was not the charge.

COMMENTARY. See Archbold, 32nd ed., 1460 *et seq.*

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[7] For the appellant: *P. A. Marrinan* (instructed by Lesser & Co.). For the Crown: *Henry Elam* (instructed by the Director of Public Prosecutions).

[8] The appellant appeared in person.

Larceny—*Stealing by finding—intent to steal straying animals*

R. *v.* THOMAS [9] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Havers JJ.: October 19, 1953) (37 Cr.App.R. 169).

Three sheep, the property of X, trespassed on T.'s land. The sheep together with T.'s sheep then strayed on to a neighbour's land and T. drove all the sheep back on to his own land. T. was charged with the larceny of X's sheep. The judge stressed to the jury that the original finding was larceny. T. was convicted and sentenced to nine months' imprisonment. T. appealed.

Held, allowing the appeal, that the conviction should be quashed, not by reason of the merits since the jury obviously thought that T. had acted dishonestly, but because the case was not properly presented regarding the doctrine of stealing by finding. When the sheep first strayed on to T.'s land he was entitled to distrain them damage feasant because they had been feeding on his land, and until he drove them back on to his own land he had done nothing which amounted to a carrying away. It had always been held that if there was no original felonious intent, a subsequent dishonest attempt to convert to a person's use would not amount to larceny. The original finding was not larceny and as the question whether the driving back of the sheep was larceny had never been properly put to the jury the conviction could not stand.

COMMENTARY. To constitute stealing "there must be an actual taking or severance of the goods from the possession of the owner, on the ground that larceny includes a trespass": 2 Russell, 10th ed., 1071.

The intent permanently to deprive the owner must be formed at the time at which the taking away occurs: see *R.* v. *Hudson* [1943] K.B. 458; 29 Cr.App.R. 65.

See Archbold, 32nd ed., 517, 520.

Magistrates—*Retirement of clerk—effect of direction*

Ex p. HOW [10] (Q.B., Divisional Court: Lord Goddard C.J., Sellers and Barry JJ.: December 4, 1953) ([1953] 1 W.L.R. 1480; [1953] 2 All E.R. 1562).

H. applied for leave to move for an order of certiorari on the ground that since the magistrates' clerk retired with the magistrates, although the case raised no point of law, his conviction was bad. H.'s affidavit showed that he pleaded not guilty to a charge of driving a trolley-bus without reasonable consideration for other road users. He alleged that after the evidence had been heard the chairman leaned towards the clerk and said: "Dismissed." The clerk spoke to the chairman, the magistrates then retired with the clerk, and on returning to court convicted H., fining him £2 and costs.

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[9] For the appellant: *Norman Richards* (instructed by Woodcock, Ryland & Co. for Ivor Rees, Haverfordwest). For the Crown: *Victor Durand* (instructed by W. J. Philipps Williams, Haverfordwest).

[10] For the applicant: *Gerald Owen* (instructed by Geoffrey B. Gush & Co.).

Held, dismissing the application, that the court would not always quash convictions because the magistrates had not followed the recent direction ([1954] Crim.L.R. 44). In the present case the hearing took place before the direction was given, but if justices did disregard it, it would be a ground of complaint against them to the Lord Chancellor. It was not to be thought that every defendant who had been convicted when the clerk retired with the justices would get his conviction quashed.

Murder—*Concealment of birth—joint trial of husband and wife*

R. *v.* CONROY AND CONROY [11] (Leeds Assizes: Glyn-Jones J.: December 3, 1953) (Court of Criminal Appeal: Lord Goddard C.J., Byrne and Parker JJ.: January 18, 1954).

The two accused, who at the time of the trial were husband and wife, were charged with the murder of a child to which the wife had given birth on or about June 30, 1953, of whom the husband was the father, being at that time a lodger in the woman's house. Evidence was given that the woman was pregnant in May and June, that she had had conversations, in the absence of the man, showing that she had been to an antenatal clinic and that there were people willing to assist her at the time of the birth. It was further shown that such assistance was not sought by either of the accused and that the woman took no further steps to obtain medical attention at the time of the birth.

The incidents of the alleged offence were that the man returning from work found that the woman was giving birth to a child and assisted her at the birth. Five days later both accused were separately interviewed by the police and the man made a statement and took the police to the cellar of the woman's house, where a sack was found which contained a child's body. Medical evidence adduced by the prosecution showed that the body had been burnt after death, that there were stab wounds which were inflicted after death, and that the child had a fractured skull which was alleged to be the cause of death. The medical evidence called for the defence was that no one could be absolutely certain that the fractures were caused during life and that they were the cause of death.

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[11] For the prosecution: *R. Hinchcliffe Q.C.*, *Stanley Price* (instructed by the Director of Public Prosecutions). For the accused husband: *H. R. B. Shepherd Q.C.*, *H. S. Pears* (instructed by Swann, Dodson & Co., Sheffield). For the accused wife: *J. F. Drabble Q.C.*, *J. I. E. Arnold* (instructed by John McAvoy, Sheffield).

The man was charged on July 5 with concealment of birth, and after a further statement from the woman, made in the absence of the man, she also was charged with the same offence on July 13. The accused were committed for trial on those charges and were released on bail. Whilst on bail they were married. On October 6, a coroner's jury brought in a verdict of murder against the man, and infanticide against the woman. Subsequently leave was granted to indict the woman for murder and both accused were therefore charged with murder.

Before the trial, counsel for the accused applied for separate trials on the following grounds: (1) there was no evidence admissible as against the man before the birth of the child and his trial would be prejudiced because the evidence against the woman of the statements she had made before the birth of the child would be before the jury at his trial; (2) each accused made a number of statements after the birth of the child in the absence of the other which, it was submitted, would prejudice the case of each of the accused; (3) since the two accused were husband and wife it was undesirable that they should have to give evidence in their own defence; such evidence might prejudice the case of the other spouse having regard to the principle that one spouse would not be a compellable witness against the other.

Glyn-Jones J. *refused* the applications for separate trials.

At the trial the man gave evidence denying that he killed the child, or that he knew how it was killed. The wife, having admitted in her statements that she attempted to burn the body of the child, and that she did not know how the child died, did not give evidence.

It was contended on behalf of the woman that it was for the prosecution to prove the woman's intent to murder quite clearly, and that it was not for the defence to prove that her balance of mind was disturbed by reason of the fact that she had recently given birth to a child, since the prosecution had admitted that the child probably lived for only a few minutes.

Glyn-Jones J. *directed* the jury: (1) that if they were satisfied that there was a common purpose to murder the child, and that one or other of them killed the child, they should return a verdict of guilty against both accused.

(2) That if they were satisfied that there was a common purpose to murder the child, but that the woman would not have gone through with the killing if the balance of her mind had not been disturbed, then they should return a verdict of guilty of murder against the man and a verdict of guilty of infanticide against the woman.

(3) In deciding whether there was a common purpose they should look at the evidence and conduct of the parties before the child was born, and if they were satisfied that there was a common purpose they should treat statements made by the woman, in the absence of the man before the child was born, as evidence against the man.

The jury returned a verdict of guilty of murder against both accused. [Reported by H. S. Pears, Esq., *Barrister-at-Law*.]

The Court of Criminal Appeal dismissing the appeal *held*, that there was ample evidence that the accused were acting in concert and that, taken in conjunction with the wounds inflicted before and after death, justified the verdict of murder against both.

COMMENTARY. As to the power to order separate trials, see Archbold, 32nd ed., 50, 53.

As to participation in a common design, see Archbold, 32nd ed., 1467.

Murder — *Evidence — effect of proceedings in a magistrates' court on another charge*

R. *v.* WHITEWAY[12] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: December 7, 1953) (*The Times*, December 8, 1953).

On May 31, 1953, two girls were cycling home when they were killed and thrown into the river. W. was originally arrested on a charge of attempted rape of a woman. During inquiries he admitted that he had raped a schoolgirl, aged fifteen, on Oxshott Common. The magistrates' court proceedings were reported in the press and W. was committed for trial. In the meantime the investigations into the murder were continuing and W. was subsequently charged with the murder of one of the two girls. An axe, which had been hidden in the car in which W. had first been taken to the police station, was placed on the table in front of W. and he was told that his shoes had been tested and that one of them had had blood on it. W. thereupon made a statement in which he confessed to the murder of both girls. W. was convicted on the murder charge. He appealed first, on the ground that the trial judge was wrong in allowing the prosecution to adduce any evidence from the schoolgirl whom W. was alleged to have raped, because the jury might have known about the magistrates' court proceedings and been prejudiced, and secondly, that there were misdirections in the summing-up, one of which related to W.'s alibi.

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[12] For the appellant: *Peter Rawlinson* and *Michael Havers* (instructed by Prothero & Prothero). For the Crown: *Christmas Humphreys* and *Maxwell Turner* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeal, (1) that the schoolgirl merely gave her name and address and said that she saw a man on Oxshott Common. The jury were not told about her rape because the judge ruled that her evidence was inadmissible.

(2) There was no ground for any complaint against the summing-up. If the jury accepted W.'s confession (as they did) it did not matter what evidence was given in support of an alibi.

Murder—*Insanity—psychopathic mentality*

R. *v.* WILKINSON [13] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: December 1, 1953) (*The Times*, December 2, 1953).

W. was charged with the murder of a child. He made a full confession and the only question that arose at the trial before Hilbery J. at the Central Criminal Court was as to his state of mind. The defence called W.'s mother who gave evidence that he had exhibited peculiarities as a child, had been in the hands of psychiatrists, and that two relatives had died in lunatic asylums. The two doctors who were called, one by the prosecution and one by the defence, both said that W. suffered from a psychopathic mentality. They both said that it was not a disease but a defect of character. Hilbery J.

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[13] For the appellant: *Gilbert Rountree* (instructed by the Registrar of the Court of Criminal Appeal). For the Crown: *Christmas Humphreys* and *Maxwell Turner* (instructed by the Director of Public Prosecutions).

ruled that there was no evidence of insanity to go to the jury as there was no disease of the mind. W. was convicted and sentenced to death. On appeal counsel submitted that as insanity was primarily a question for the jury they should have been allowed to consider the mother's evidence, together with the fact that although medical experts did not consider a psychopathic mentality to be a disease some members of the profession did so consider it. The court said that the argument might have been stronger if the doctors had not been called; the doctors' evidence negatived that of the mother.

Held, that there was no evidence on which the jury could have found that the appellant was insane.

COMMENTARY. As to the tests of insanity, see Archbold, 32nd ed., 15 *et seq.* See also [1954] Crim.L.R. 22.

Police—*Action against—plaintiff's desire to challenge act done under routine orders*

HAMSHERE *v.* THE METROPOLITAN POLICE [14] (Court of Appeal: Somervell, Denning and Romer L.JJ.: December 15, 1953) (*The Times*, December 16, 1953).

H., in his statement of claim, alleged that on October 15, 1953, he was stopped by a police constable, asked his name and address and required to show the contents of his rucksack. H. being doubtful whether the conditions which entitled a constable to act in such a manner had been fulfilled, went to the police station. He claimed that he was told that he had not been stopped in connection with any crime, but as a matter of routine which required the police to stop people in the possibility that they might be thieves. H. issued a writ directed to the Metropolitan Police to which a conditional appearance was entered, stating that the Metropolitan Police was not a corporation capable of being sued and giving the name of the constable concerned. H. then applied to amend his writ by substituting as defendants the Commissioner of Police for the Metropolis and the constable. The master and judge decided that H. should be allowed to substitute the constable as defendant but not the Commissioner. H. appealed.

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[14] The appellant appeared in person. For the respondents: *W. W. Stabb* (instructed by the Metropolitan Police).

Held, that it was clear from his writ that H. wished to proceed against whoever was in control as distinct from a particular individual. He apparently wished to allege that what took place was the result of routine orders, the legality of which he desired to challenge. H. therefore should be allowed to substitute the Commissioner and the constable for the Metropolitan Police, and be ordered to submit a fresh statement of claim appropriate to those persons.

Sentence—*Probation—stay at mental hospital*

R. *v.* TOMLINSON [15] (Court of Criminal Appeal: Lord Goddard C.J., Croom-Johnson and Glyn-Jones JJ.: November 2, 1953).

T., aged 21, pleaded guilty to a charge of putting rat poison in her neighbour's tea with intent to annoy. She was sentenced to eighteen months' imprisonment. On appeal against sentence, counsel said that T. had told the police what she had done shortly afterwards. T. had been brought up by a county council; she had shown considerable ability and had won a major county award to go to a dramatic academy. She had no previous convictions. The court varied her sentence by putting her on probation for two years, the first twelve months of which she was to spend at a mental hospital.

Sentence—*Remission—recommendation for*

R. *v.* BRIERLEY; R. *v.* WALTON [16] (Court of Criminal Appeal: Lord Goddard C.J., Croom-Johnson and Glyn-Jones JJ.: November 2, 1953).

The appeals of both prisoners against their sentences of four and three years' imprisonment respectively for attacks on their wives were dismissed. Lord Goddard C.J. said that both men were mentally unstable but their condition had improved and according to medical reports they might, in a few months, be safe to return home. The court would suggest to the Home Secretary that when the men improved sufficiently for it to be safe for them to return home, he might see fit to remit the remainder of their sentences.

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[15] For the appellant: *Miss F. A. Hopkins* (instructed by Fleury, Gassman & Co.).

[16] The applicants did not appear and were not represented.

Summing-up—*Failure to put defence to the jury*

R. *v.* WATERS[17] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: December 8, 1953) (*The Times*, December 9, 1953).

W. was indicted with two other men. The indictment contained a count of conspiring to defraud the War Damage Commission, and a number of counts relating to different properties alleging that money was obtained from the War Damage Commission by false pretences. The Crown's case was that W., an estate agent, had purchased war-damaged property in false names in respect of which fraudulent claims were made to the War Damage Commission that work had been done which had not in fact been done. W.'s defence was that he had employed the two men with whom he was indicted and was entitled to rely on what they told him concerning the work. The commissioner in summing-up had almost implored the jury to acquit the two employees, which they did. Accordingly, the conspiracy count failed but W. was convicted on the counts of false pretences and sentenced to twelve months' imprisonment. On appeal:—

Held, allowing the appeal, that W.'s business was fraudulent from beginning to end, but that he was entitled to have his defence put to the jury. The summing-up was mostly unintelligible, and W.'s defence was never suggested to the jury. The court had no option but to quash the conviction because W. had not been fairly and properly tried.

COMMENTARY. As to the judge's duties and powers when summing-up see Archbold, 32nd ed., 194–5.

Trial—*Separate trials—trial of husband and wife.* See R. *v.* CONROY AND CONROY, p. 141.

Vagrancy—*Living on the earnings of prostitution*

CALVERT *v.* MAYES[18] (Q.B., Divisional Court: Lord Goddard C.J., Sellers and Barry JJ.: December 9, 1953) ([1954] 2 W.L.R. 18; [1954] 1 All E.R. 41).

M. was charged with living on the earnings of prostitution contrary to section 1 (1) of the Vagrancy Act, 1898. He was convicted and sentenced to three months' imprisonment. He appealed to quarter sessions. It was found that M. was a part-time hire-car driver, who spent most of his evenings in premises comprising a hotel and a public-house, extensively patronised by American servicemen. The premises were also frequented by prostitutes, in whose company M. frequently was, and over whose movements he exercised direction and influence and generally aided and abetted their prostitution with the servicemen. When M. visited the premises the car he drove was parked outside. It was often used for prostitution either on journeys back to the servicemen's camp or for short journeys to convenient places nearby. The prostitutes never received any money but obtained reward in the form of food, drink and clothing. The defendant was paid £2 for a journey back to the camp, which was the standard charge. In view of the fact that free transport was provided for the servicemen, but for the presence of the prostitutes M.'s car would have been used less frequently, and not at all for the shorter journeys at 10s. a time. M. had also allowed his house to be used as a brothel, for which offence he had been convicted and sentenced to three months' imprisonment. The prostitutes had obtained reward in the form of food, drink and clothing, and M. usually charged the servicemen £2 a night. M. also allowed a prostitute to stay in his house for four weeks on the terms that she paid for her board and lodging by prostituting herself, and she was informed that one man a week would suffice to cover her keep for a week.

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[17] For the appellant: *R. F. Levy Q.C.* and *Bernard Gillis* (instructed by S. A. Bailey & Co.). For the Crown: *R. E. Seaton* and *Maxwell Turner* (instructed by the Director of Public Prosecutions).

[18] For the prosecution: *L. K. E. Boreham* (instructed by Metcalfe, Copeman & Pettefar). For the defendant: *Edward Gardner* (instructed by Jaques & Co. for Ollard, Ollard & Sessions, Wisbech).

M. knew the purpose for which the car and his house were being used but he was never paid any money by any of the prostitutes. It was submitted on his behalf that although he knew the women were prostitutes, and allowed his house to be used as a brothel and his car for the purposes of prostitution, nevertheless as he had not received any money from the prostitutes and the money paid him by the servicemen was for the use of the house or car as a brothel, he was not guilty of the offence charged.

The recorder held that M. had satisfied the court that he had not been living in part on the earnings of prostitution, and although the evidence would support a charge of keeping a brothel, there was no evidence to support the offence charged and he allowed the appeal. The prosecutor appealed.

Held, allowing the appeal, that the defendant was living on the earnings of prostitutes within the meaning of section 1

(1) because he was receiving money which but for the prostitution he would never have been paid. It did not matter whether he received the money from the servicemen or from the girl, because in any case she was earning the money by prostitution. The fact that M. also drove the men was not a defence because, but for the prostitution, they would have availed themselves of the free transport and not gone by car.

COMMENTARY. Section 1 (1) creates the offence of living wholly or partly on the earnings of prostitution and by subsection (3) a person is deemed to be so living if he has "exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting, or compelling her prostitution with any other person or generally," in the view of Sellers and Barry JJ. the accused came within this subsection.

See Stone, 85th ed., 2394.

Acts and Orders

Continuance of Offences

EXPIRING LAWS CONTINUANCE ACT, 1953 (2 Eliz. 2, c. 9).

There are continued in force until December 31, 1954, *inter alia*, the following provisions : Aliens Restriction (Amendment) Act, 1919, s. 1 (continuance of emergency powers under Aliens Restriction Act, 1914, s. 1 (1)); Road Traffic Act, 1934, s. 1 (speed limit in built-up areas); Population (Statistics) Act, 1938; Prevention of Violence (Temporary Provisions) Act, 1939, in so far as it relates to existing expulsion, registration and prohibition orders. The Furnished Houses (Rent Control) Act, 1946, is continued in force until March 31, 1955.

Food and Drugs

FOOD (INSPECTION OF UNDERTAKINGS) (REVOCATION) ORDER, 1953 (S.I. No. 1739): operative December 6, 1953.

The Food (Inspection of Undertakings) Order, 1943 (S.I. No. 79) which gave certain powers of entry and the right to demand the production of some books and accounts has been revoked.

London

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1953, No. 31 (S.I. No. 1801): operative December 28, 1953; No. 32 (S.I. No. 1815): operative December 30, 1953.

Prescribed routes are detailed for St. James's Square in the City of Westminster, and certain roads in the Thurrock Urban District. Fines not exceeding £5 for a first offence and £10 for a second offence may be imposed for contraventions.

CITY OF LONDON (OLD BROAD STREET) (RESTRICTION OF WAITING) REGULATIONS, 1953 (S.I. No. 1802): operative December 28, 1953.

LONDON TRAFFIC (PROHIBITION OF WAITING) (DARTFORD) REGULATIONS, 1953 (S.I. No. 1896): operative January 11, 1953.

Waiting is restricted in Old Broad Street in the City of London and prohibited in certain streets in the borough of Dartford. Fines not exceeding £5 may be imposed for contraventions.

Magistrates' Courts

PETTY SESSIONAL DIVISIONS (ANGLESEY) ORDER, 1953 (S.I. No. 1756): operative January 1, 1954.

The petty sessional divisions of Anglesey are altered.

PETTY SESSIONAL DIVISIONS (EAST KENT) ORDER, 1953 (S.I. No. 1757): fully operative January 1, 1954.

The petty sessional divisions of East Kent are altered.

PETTY SESSIONAL DIVISIONS (WESTMORLAND) ORDER, 1953 (S.I. No. 1758): operative January 1, 1954.

The petty sessional divisions of Kendal Ward and Lonsdale Ward in Westmorland are defined.

PETTY SESSIONAL DIVISIONS (FLINTSHIRE) ORDER, 1953 (S.I. No. 1789): fully operative January 1, 1954.

The petty sessional divisions of Holywell and Caerwys are abolished and a new division of Holywell and Caerwys is created. The Overton division is renamed the Maelor division. Other divisions of Flintshire are altered.

PETTY SESSIONAL DIVISIONS (BUCKINGHAMSHIRE) ORDER, 1953 (S.I. No. 1791): fully operative January 1, 1954.

The petty sessional divisions of Buckingham (County) and the borough of Buckingham are abolished and a new division of Buckingham is created. Other divisions of Buckinghamshire are altered.

PETTY SESSIONAL DIVISIONS (STAFFORDSHIRE) ORDER, 1953 (S.I. No. 1817): fully operative January 1, 1954.

The petty sessional divisions of Tamworth and the borough of Tamworth are abolished and a new division of Tamworth is created.

PETTY SESSIONAL DIVISIONS (BEDFORDSHIRE) ORDER, 1953 (S.I. No. 1834): fully operative January 1, 1954.

The petty sessional divisions of Dunstable, Leighton Buzzard, Luton and Woburn are abolished and the new divisions of Dunstable, Leighton Buzzard and Luton created. The area of the division of Ampthill is altered.

PETTY SESSIONAL DIVISIONS (SURREY) ORDER, 1953 (S.I. No. 1839): fully operative January 1, 1954.

The petty sessional divisions of Godalming and Guildford are abolished and a new division of Godalming is created. Other divisions of Surrey are altered.

PETTY SESSIONAL DIVISIONS (NOTTINGHAMSHIRE) ORDER, 1953 (S.I. No. 1847): fully operative January 1, 1954.

The petty sessional divisions of Retford and the borough of East Retford are abolished and a new division of East Retford is created. Certain other divisions of Nottinghamshire are altered.

Police

POLICE PENSIONS REGULATIONS, 1953 (S.I. No. 1800): operative December 21, 1953.

Provision is made concerning the widow's pension where a member of a police force, acting in the execution of his duty, was attacked in a manner which, in the opinion of the police authority, was intrinsically likely to cause death, and died as a result of the attack. The amount of his widow's pension, together with certain payments under the National Insurance Acts, 1946, shall not be less than half his pay as calculated for pension purposes.

Road Traffic

ROAD VEHICLES (REGISTRATION AND LICENSING) (AMENDMENT) REGULATIONS, 1953 (S.I. No. 1753): operative December 11, 1953.

Silver or light grey as well as white letters and figures may be used on the registration marks of motor-vehicles unless the marks can be illuminated at night by transparency or translucency; they may also be used on hackney carriage plates. For penalties for contravention of the regulations see section 25 of the Vehicles (Excise) Act, 1949.

ROAD VEHICLES (TRANSPORT LEVY) REGULATIONS, 1953 (S.I. No. 1754): operative December 11, 1953.

The regulations relating to the collection of excise duties on motor-vehicles are extended to the collection of the transport levy under the Transport Act, 1953. For penalties see section 25 of the Vehicles (Excise) Act, 1949.

MOTOR VEHICLES (CONSTRUCTION AND USE) (AMENDMENT) REGULATIONS, 1953 (S.I. No. 1872): operative January 1, 1954.

The principal regulations, issued in 1951, are amended. The principal changes are: (1) there is a new definition of "land tractor"; (2) pedestrian-controlled vehicles need no longer carry warning instruments; (3) the requirements as to sanitation and brakes on certain caravan trailers are modified; (4) flashing light direction indicators may be used; (5) certain passenger vehicles may have brakes operating on the driving shaft; (6) a new type of trailer plate instead of the present T type is authorised; (7) with certain exceptions, *e.g.*, vehicles engaged on some public service or setting down or picking up passengers, stationary vehicles are required to stand with the near side next to the kerb at night—a similar requirement made under the Defence Regulations has since been revoked (S.I. 1953, No. 1874); (8) requirements as to brakes and the carriage of attendants are modified in the case of certain broken-down vehicles being towed (this amendment overrules *Hunter* v. *Towers* [1951] 1 T.L.R. 313); (9) trailer attendants are no longer required where a land tractor is drawing an agricultural trailer; (10) the total length of a heavy motor-car or a motor-car and a trailer drawn thereby is no longer limited to 60 feet.

For penalties for contravention of the regulations see section 111 of the Road Traffic Act, 1930.

MOTOR VEHICLES (CONSTRUCTION AND USE) (TRACK LAYING VEHICLES) (AMENDMENT) REGULATIONS, 1953 (S.I. No. 1873): operative January 1, 1954.

The principal changes made in the 1951 regulations are the same as those referred to in the order above, S.I. No. 1872, concerning flashing light direction indicators, trailer plates and stationary vehicles at night.

For penalties for contravention of the regulations see section 111 of the Road Traffic Act, 1930.

Seamen

MERCHANT SHIPPING (FOREIGN DESERTERS) ORDERS, 1953: MOROCCO AND FEZ (S.I. No. 1904), REPUBLIC OF FRANCE (S.I. No. 1905): both operative on January 1, 1954.

Section 238 of the Merchant Shipping Act, 1894, which relates to the apprehension of deserters from foreign ships within Her Majesty's dominions, no longer applies to deserters from merchant ships belonging to subjects of Morocco, Fez and France.

Books and Periodicals

Reviews:

Criminal Law—The General Part. By Glanville L. Williams, LL.D. (Cantab) Quain Professor of Jurisprudence in the University of London, of the Middle Temple, Barrister-at-Law. Stevens & Sons, Ltd. 1953. xliv and 719 and (index) 16 pp. £3 3s.

The learned author says in his Preface that he hopes to follow this volume with one on specific crimes, but this book deals with those general principles of our criminal law which apply to more than one crime. It constitutes a most important and valuable treatise upon those principles.

The statute law of these islands bristles with offences great and small. Many of these have not yet been fully interpreted by our courts, but the law is supposed to have its principles capable of application in relevant instances; and in this work the Quain Professor has given, we consider, as lucid statements as possible of the principles themselves, and of the extent to which they have been applied. His approach is that of the legal philosopher. He disclaims the titles of criminologist, penologist, or mental expert; but he has "endeavoured to put the law into the setting of modern penological and psychiatric thought." He appears at times critical of principles as they are commonly supposed to exist, and he is critical too of some decisions of the courts.

His subject-matter is so interesting to all intelligent people, and his style is so clear and straightforward that we believe the layman by his fireside may well find it as intriguing as will the legal practitioner. To the latter we regard this book as one of peculiar value. For instance, again and again in court a practical question arises, "Is this *act* a criminal one"? or "does this particular *omission* constitute a crime"? Such apparently elementary questions are not always easy to answer, and in this book the reader will find fundamental instruction and fruitful suggestions on such problems. Where our own case-law leaves a point in doubt, assistance is gleaned from overseas decisions. There are illuminating chapters on "Intention and Recklessness," "Negligence" and "The Unintended Victim or Mode." In another chapter entitled "Mens Rea as affected by Ignorance of Fact" there is an exhaustive discussion of the principle that an act is not intentional as to a circumstance unknown to the actor. Several well-known cases on the terms "wilfully" and "knowingly" are critically dealt with.

It may be that in ordinary criminal cases in the courts there is little occasion, or (dare we say?) little knowledge, or even time, for argument upon such matters; but to read such a chapter as that on "Principals and Accessories" is a mind-clearing experience.

We find the chapters on "Strict Responsibility" and "Vicarious Responsibility" of peculiar interest and importance. In the former the justice and the injustice of holding morally innocent people responsible are considered, as is the extent to which the dispensing with "Mens rea" in the interpretation of statutes has been an example of judge-made law not justified by the enactments of Parliament. This branch of the law has not been treated uniformly by the courts, and in practice frequently obliges magistrates to seek help from the Divisional Court. As to Vicarious Responsibility, the law is in a muddle when it comes to the construction of statutes. Manifest injustice may result. In most of the cases there is a striking lack of philosophic treatment of the subject. Judges have at times even failed to distinguish between Strict Responsibility and Vicarious Responsibility. These matters may at any time become the immediate concern of many citizens and all these chapters should be of special concern to legal draftsmen and practitioners.

In a chapter of ninety-two pages on Mental Abnormality, the McNaghten rules and the whole law and practice touching insanity in criminal cases are carefully set out and examined. No lawyer or medical man or legislator can fail to clear and enrich his mind if he studies that chapter. Its exposition of the various theories on the subject and the legal tendencies in other countries makes it specially valuable.

As to when ignorance of law can be a defence, the author refers to the American rules by which express or implied representations of law made by a public authority or a state agency may excuse one who relies on it, even though it is bad law. There is a South African authority in a similar sense; and it is suggested that the judgment of the House of Lords in *Howell* v. *Falmouth Boat Construction Co.* [1951] A.C. 837 (a contract case) might have been different had their lordships been referred to developments in the American cases. This chapter ends with an instructive explanation of "claim of right" as a defence.

From a discussion of the rule (which has become "a democratic platitude") that there must be no crime or punishment except in accordance with fixed, predetermined law it would appear arguable that this rule is by no means fully observed in our system. The author states at the beginning of his chapter on "The Principle of Legality" "It would be pleasant to be able to assert that the root principle underlying the administration of the criminal law is that of legality. Unfortunately, as has appeared only too plainly from these pages, there is no unanimity about anything in criminal law; scarcely a single important principle but has been denied by some judicial decision or by some legislation. The principle of legality is a notable sufferer from this lack of agreement."

At the end of the chapter, however, we read that "although *nullum crimen* is now supported by the strong weight of professional opinion, it is not so plainly right that no two opinions are possible about it." After all, it may be argued, the ordinary man has no precise knowledge of the criminal law. In so far as he knows it, his knowledge is either because it reflects current morality or because of convictions reported in the press. A man may consciously risk illegality in breaking moral law; he may be lucky and not offend against it, in which case he escapes punishment. But is it reasonable, asks the critic of the rule, that in such a case the judges should not extend the law against him?

Then follow chapters on legal concepts of attempted crime and of conspiracy; the law of children and young persons is discussed, as is also the meaning of "the burden of proof" and Lord Goddard C.J.'s recent deprecation of that "time-hallowed expression," "reasonable doubt," in favour of the jury being told they must be "satisfied" so that they can feel sure. It is pointed out that the word "satisfied" is ambiguous. It may mean satisfied beyond reasonable doubt, or satisfied on a balance of probability. The author agrees with Denning L.J. in *Miller* v. *Minister of Pensions* [1948] 2 All E.R. 372, as to what degree of certainty is required by law, and suggests that the judges might adopt a standard formula of explanation.

The only way in which justice can be done to this fine work is by reading and studying it. Much food for the minds of the law-maker, be he draftsman or politician, is to be found there, and every lawyer should read it and keep it by his side.

A. W. Cockburn.

Books Received:

Wilshere's Criminal Procedure. Third edition, by H. A. Palmer, M.A., and Henry Palmer, M.A., Barristers-at-Law. London: Sweet & Maxwell, Ltd. 1954. xxiv and 293 and (index) 10 pp. 22s. 6d.

Psychological Disorder and Crime. By W. Lindesay Neustatter, M.D., B.SC., M.R.C.P. London: Christopher Johnson. 1953. 244 and (index) 4 pp. (21s. net.)

Six Lectures for Justices. London: The Magistrates' Association. 1953. viii and 117 pp. (no index). (6s. net.)

Criminal Law and Procedure in a Nutshell. Ninth edition, by Marston Garsia, B.A., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1954. xx and 192 and (index) 6 pp. (6s. 6d. net.)

Articles:

Solicitors Journal,
- Vol. 97.
  - Cruelty to animals, p. 855.
- Vol. 98.
  - Movable buildings as chattels, p. 5.

Law Journal,
- Vol. 103.
  - The overloading of vehicles, p. 808.
- Vol. 104.
  - Motor insurance and unlicensed drivers, p. 24.

Justice of the Peace,
- Vol. 117.
  - Justices' Clerks' Accounts, p. 803.
  - Report of the Central After-Care Association, p. 806.
  - Welcome—a new order (the Aliens Order, 1953), p. 834.
- Vol. 118.
  - Vulgar postcards, p. 5.

Probation, Vol. 6.
- Probation case-work, basic principles and methods, p. 278.

Police Review, Vol. 62.
- The Firearms Act, 1937, p. 6.
- Goods Vehicles—I, p. 20.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review,* 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

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THE

CRIMINAL LAW

REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Archbold

The thirty-third edition of Archbold's *Pleading, Evidence and Practice in Criminal Cases* has now been published with a short supplement which brings the work up to date to February 1, 1954. In this issue of the *The Criminal Law Review* references to the new edition of Archbold have been given.

Consular convention with France

A consular convention with France has been ratified and came into force on January 14, 1954. It is in most respects similar to the convention with Norway of 1951. The Home Office have issued a circular, No. 37/1954, dated February 4, 1954, outlining the provisions principally affecting the courts; they affect court procedure, immunity from proceedings, shipping, deserters from merchant ships (see also [1954] Crim.L.R. 153), jury service and powers of entry in relation to consular offices (see S.I. 1953, No. 1455).

Mock auctions

Dissatisfaction has been expressed as a result of the swindles perpetrated by what are known as " mock auctions." The Home Secretary has considered the matter and does not think that there is any urgent need to amend the law although he admitted that the prevention of this type of undesirable practice is not easily achieved by legal prohibitions.[1]

The subject of mock auctions cropped up in a recent case not worthy of a detailed report. In that case the two defendants, More and Green, were indicted for the conversion of goods. They ran a mock auction, the goods being supplied by the prosecutor on certain terms as to the payment of costs and profits, and failed to hand over the proceeds of sale. They were convicted on the indictment and appealed. Their appeal was allowed, not because there was no conversion, but on the ground that the indictment should have been for the conversion of money, not of goods.[2]

Marked men

The idea was put to the Minister of Transport and Civil Aviation that drivers convicted of serious driving offences should be issued with special recognisable number plates. Such a policy would not be very effective since, as the Minister pointed out when rejecting the idea, the plate would be attached to the unoffending vehicle and not the offending driver.[3]

Lights on vehicles

The Minister of Transport and Civil Aviation is considering the comments sent to him about the rear lights and reflectors on vehicles. The law concerning rear lights on bicycles is also being considered.

Whilst the Minister has power to make regulations permitting vehicles to park without lights he has not yet done so and before making any such regulations he intends to consult various representative bodies.[4]

Regulations on this subject would have been of value to a defendant at Birmingham who was recently charged with failing to show proper lights and placing an overhead wire over a street without obtaining consent. The defendant, Mr. Awerioghene, had fixed a red bulb in a socket which was held to the roof of his car by a clip and a brick and connected by a wire over the pavement to the mains supply in the defendant's house. He thought that one light was sufficient but pleaded guilty to both charges and was fined 20s. on the first and given an absolute discharge on the second by the Stipendiary Magistrate, Mr. Milward.

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[1] H.C. Debates, Vol. 522, col. *273*, January 28, 1954.

[2] Court of Criminal Appeal, January 18, 1954.

[3] H.C. Debates, Vol. 522, col. *235*, January 27, 1954.

[4] H.C. Debates, Vol. 522, col. *232*, January 26, 1954; col. 1753, January 27, 1954; Vol. 523, col. 358, February 3, 1954.

Special occasions

The Minister proposes consulting the persons interested to see if it would be possible to delimit anew what occasions shall be "special occasions" for the purposes of section 61 of the Road Traffic Act, 1930.[5]

Mud on roads

Questioned about the danger and inconvenience caused to road users on the A41 in the neighbourhood of Elstree by earth spilling from lorries, the Home Secretary said that there was a by-law in that district to prevent nuisance and danger caused in this way, which the police enforced in the ordinary course of their duty.[6]

Some local authorities are obviously awake to this problem as can be seen from the report of a case in Yorkshire, see *R.* v. *Mainprize*, p. 213.

The speed limit

Initiating a debate on the speed limit in built-up areas[7] Lord Elton put three propositions: that the speed limit would save life if it were generally regarded; that it is, in general, disregarded and that that disregard helps to decrease popular respect for the law. He made a plea for the more efficient enforcement of the speed limit and suggested that the solution lay in the provision of plain clothes policemen operating police traps.

Lord Lucas of Chilworth did not think that speed was a major cause of accidents in built-up areas. He, and Lord Hampton, put the blame upon congestion and its attendant ills of intolerance, selfishness, bad behaviour and frustration on the part of all road users. He also blamed the carrying of abnormal loads and stated that the 30 miles an hour speed limit is the refuge of the indolent and lazy local authority. Lord Lucas did not favour the idea of police traps but he did not object to the Oxford County experiment so long as the plain clothes police in a motor-car do not have the same rights of arrest and prosecution as the uniformed police.

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[5] H.C. Debates, Vol. 522, col. 1004, January 20, 1954.

[6] H.C. Debates, Vol. 522, col. *187*, January 21, 1954.

[7] H.L. Debates, Vol. 185, col. 547, January 28, 1954.

The Bishop of Carlisle asked for a revision of the speed limit areas and asked for the imposition of stronger penalties.

Earl Howe did not consider that speed was the essential matter but whether a person was driving dangerously; he asked for a reconsideration of the speed limit on heavy commercial vehicles and for the use of signs on lamp-posts, etc., to show restricted areas.

Lord Somers suggested that consideration for others and attention to the control of a car were more important than speed in itself.

The view of Lord Fairfax of Cameron was that there should be a general overhaul and revision of the present 30 m.p.h. speed limit and he criticised the procedure for derestricting roads.

The use of police not in uniform was in Lord Hampton's view worthy of trial.

Replying for the Government Lord Lloyd said that there has been a steady decline in the number of casualties per 1,000 vehicles. He pointed out that the number of accidents in which speed was the main contributory cause was small; he pointed to other factors such as bad driving, unroadworthy or defective cars, cyclists riding four abreast, jay walking and other matters. He said that the Minister of Transport is considering the possibility of initiating a review of the speed limit areas; consideration is being given to ways of saving the time of the police (see *e.g.* [1954] Crim.L.R. 73). In the Government's view, Lord Lloyd continued, there is no doubt that the proper use of plain clothes police patrols is of great value and fully justified. He promised to take up the points about abnormal loads and the better indication of restricted areas and he asked magistrates to consider whether, particularly in cases of dangerous driving, the present penalties which they impose are sufficient.

Metropolitan Police reorganisation

In a recent statement [8] the Home Secretary said that recommendations made by a working party for improvements in the organisation of the Metropolitan Police Force have now been implemented by the Commissioner. The responsibilities of uniformed officers in charge of subdivisions have been increased and their rank altered accordingly; similar changes have been made among persons holding comparable posts in the Criminal Investigation Department. A research and planning branch has been set up at headquarters. In certain posts where the work does not call for the exercise of police powers and experience, police officers have been replaced by civilians.

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[8] H.C. Debates, Vol. 522, col. *183*, January 21, 1954.

Prisons

The Home Secretary states that prison officers attending a physical training course run in conjunction with the Central Council of Physical Recreation are not usually taught ju jitsu although they may volunteer for such instruction.[9]

The experiment of allowing five third-stage preventive detention prisoners to spend Christmas Day with families in Bristol was a success and may be repeated.[10]

Attendance of witnesses at magistrates' courts

Although a procedure for finding out in advance whether defendants intend to appear or to plead guilty has not yet been officially brought into being,[11] some magistrates' courts operate such a procedure, evidently with success. We print a letter from a subscriber and set out the forms which he uses, see p. 227.

The Clapham Common murder

The House of Lords have given their reasons for dismissing the appeal of Michael John Davies (see *The Times*, February 20, 1954); a report will be published in our next issue.

Changes in judicial appointments

Mr. H. J. Phillimore, O.B.E., Q.C., has been appointed Recorder of Winchester, Mr. E. S. Fay, Recorder of Andover and Mr. M. McGougan, Recorder of Poole.

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[9] H.C. Debates, Vol. 522, col. 275, January 28, 1954.

[10] *Ibid.*

[11] See [1954] Crim.L.R. 73.

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Blackmail

(*Continued from p.* 92)

By Glanville L. Williams, LL.D.(Cantab)
Barrister-at-Law, Quain Professor of Jurisprudence in the University of London

(3) The mental state and general justifications

The intent or other mental state required by the three blackmail sections of the Larceny Act, 1916, or the justification admitted, appears in the same bewildering variety of forms as the pressure and the property attempted to be obtained. Section 29 (1) (i) requires that the demand for the property or valuable thing should have been made " without any reasonable or probable cause." Paragraphs (ii) and (iii) of the same section require an " intent to extort or gain " any property or valuable thing. Section 29 (2) requires an " intent to defraud or injure," and section 30 an " intent to steal." Section 31 requires an intent to " extort " a valuable thing or " induce " an appointment. Here again the explanation of the differences of language is historical; but the differences have had one important consequence in the construction placed upon the sections by the courts.

The three kinds of improper threat

To begin with section 29 (1) (i), it seems simplest, before examining the authorities, to state the net effect of the interpretation now generally accepted. The position is that it is not necessarily a defence to say that what was being demanded was in fact due, or that the threat made was one that could in itself be legally carried out.

(1) To take an example of the first, suppose that P owes D £5. D writes to P, saying " Pay me the £5 or I will knock you down." Here D is justified in making the demand but not justified in making the threat, since assault is a tort and a crime and to threaten an assault is not a proper mode of collecting debts. D is therefore guilty of an offence under section 29 (1) (i). It will be seen that in this example the demand (*i.e.*, the demand of the money) is not merely lawful

in the sense that it is not in itself a wrong, but is a demand that could be legally enforced; but the conduct threatened, if carried out, would be a legal wrong, namely, the wrong of assault. Together, the demand and the threat constitute the crime of blackmail. The conclusion would be precisely the same if no money was owing and D's intention was merely to extort money from P under pressure. The essence of the offence in this type of case is the threat of the unlawful act as a means of procuring money (or other property); it does not matter whether the money is actually owing or not.

(2) It may still be an offence under section 29 (1) (i) even though the conduct threatened, if carried out, would itself be lawful. Suppose that D, to whom no money is owing, writes to P, saying: "Pay me £5 or I will make it known that you have committed larceny." P has in fact committed larceny. Now, to say that a man has committed larceny, if the statement is true, is not necessarily a legal wrong. It is not the tort of defamation, and it is not a criminal libel unless (1) the defamatory statement is in writing, and (2) the publication is not in the public interest. If these two conditions are not satisfied, the threat is to do an act that in itself is lawful. Nor is there any wrong merely in demanding payment of a sum of money. A man is at perfect liberty to importune a gift. The demand made is therefore lawful in itself (in the sense that it is not a legal wrong, though, of course, it could not be legally enforced), and the threat made could in itself be both lawfully made and lawfully carried out. Yet taking the demand and the threat together they constitute blackmail. The two things that taken separately are moral and legal ~~whites~~ together make a moral and legal black. Although D has a liberty to demand money and a liberty to speak the truth concerning others, and even to threaten to speak the truth, he is not at liberty to demand money under threat of speaking the truth. The position would be the same even if £5 were in fact owing to D: the threat of publicity would not be a proper mode of collecting the debt.

Reviewing these two examples, it will be seen that the threat may be improper (1) because the conduct threatened would be unlawful in itself, or (2) because the threat is one that ought not to be made as a means of obtaining an advantage. In neither case does it matter whether or not the property is (or is thought to be) legally due.

(3) There is a third possibility. The conduct threatened may be lawful in itself, and the threat may be a proper one to make as a means of obtaining property (or other advantage) *if the property is thought to be due*; yet the threat may be morally and legally improper if the property is known not to be due. The best example of this situation is where the threat is to bring a civil action or other civil proceedings (*e.g.*, to claim damages in divorce for adultery). Here the threat is perfectly proper if the money or other property demanded is thought to be due, improper if it is known not to be due. It is only in cases of type (3) that it is important to ask whether or not the party thought that the property was due. Whether " due " in this rule means due legally or due morally is a matter to be considered later.

The judicial interpretation of section 29 (1) (i)

We must now see how these three rules can be got out of the wording of section 29 (1) (i). The paragraph does not explicitly refer to any of them. What it says is that the demanding with menaces must be without any reasonable or probable cause. " Probable " in this phrase seems to be surplusage, and it is enough to speak of " reasonable cause " (*Thorne* v. *Motor Trade Association* [1937] A.C. 797 at 817, *per* Lord Wright). The question that presents itself as a matter of construction is whether the requirement of absence of reasonable cause means cause for the demand or cause for the menaces. The paragraph does not say. If it means exclusively cause for the demand, it would follow that there cannot be an offence under the paragraph if the property demanded is, in fact, due or is reasonably thought to be due. It seems that this was the original meaning of the enactment as it appeared in earlier legislation, and this was the way in which the courts at first interpreted it. Thus in *Miard* (1844) 1 Cox C.C. 22, the accused, a woman, made a written demand for money from a clergyman, under the threat of accusing him of disgraceful conduct to people in the village and other clergymen. On a prosecution under what is now section 29 (1) (i), Tindal C.J. directed the jury that it would be a good defence for her to show that she honestly believed that the money was due to her. A change of interpretation occurred with *Dymond* [1920] 2 K.B. 260; 15 Cr.App.R. 1 (C.C.A.), in which it was held for the first time that the prisoner's reasonable belief in his right to the property, or even (apparently) his actual right to the property, was no defence if the threats used were improper.

The facts of the case were as follows: D, a girl who alleged that she had been indecently assaulted by P, wrote him a letter in which she threatened him that if he did not pay her money she would "summons" him and "let the town knowed all about your going on." In a prosecution under section 29 (1) (i), Darling J. refused to allow evidence to be called either as to the fact of indecent assault or as to her belief that it had taken place, neither fact being in his view relevant as a defence. The accused was convicted, and the conviction was upheld on appeal.

The effect of the decision is to make the words "without reasonable or probable cause" in section 29 (1) (i) a synonym for "unreasonably." The conduct of the accused taken as a whole may be unreasonable even though he reasonably believed (and perhaps rightly believed) that he had a right to the money or other property. In the instant case the accused may have had a right to damages for assault, but when she tried to obtain the money by threats of prosecution and public accusation she violated the criminal law. It is not only the demand but the threat that must be reasonable; it must be reasonable to make that kind of threat to get that amount of money. In particular, it is not reasonable to try to obtain money by threatening to accuse the other of an immoral act, or to prosecute him for a crime.

The threat of prosecution as a means of obtaining money

This decision, which can be overruled only by the House of Lords, stands at the moment as the authoritative interpretation of section 29 (1) (i). Its consequences for those trying to enforce their legal rights in improper ways are serious, for, if they put their threats into writing, they become liable to imprisonment for life. The matter assumes a somewhat surprising aspect when it is realised how fine is the line dividing proper from improper threats. Dymond was an illiterate girl, trying to obtain what she may have believed to be her just rights without legal aid. Had she had the sum of 13s. 4d. with which to consult a solicitor, instead of writing herself, he would have written a letter to the prosecutor on her behalf in something like the following terms. "Dear Sir, We have been consulted by . . . who states that. . . . Our client claims the sum of £—— as compensation for the wrong committed against her, and unless we have your cheque for this amount we are instructed to commence legal proceedings against you." Such a letter would not constitute a criminal offence. The recipient, if a layman, might interpret the term "legal proceedings" contained in the letter as including prosecution, and indeed they might include prosecution; but a court, giving the alleged blackmailer the benefit of the doubt, would generally read the letter merely as a threat of civil proceedings, which threat would be allowable. An ignorant person who writes a letter on his own does not understand these subtleties. He does not realise the difference between civil and criminal proceedings, or if he does he may use the word "prosecute" or "summons" when he really means "sue." *Dymond* is therefore a somewhat hard case, and unless an adequate legal aid scheme is in operation the hardship bears particularly upon the poor.

It may also be pointed out that the distinction between threatening civil proceedings (which is allowable) and threatening criminal proceedings (which is not) is somewhat artificial when what the victim most dreads is exposure. Exposure follows as much from the bringing of civil proceedings as from the launching of a criminal prosecution. A solicitor who threatens to sue for indecent assault a citizen of hitherto unblemished reputation knows that what the other really fears is not the trouble and expense of defending the action but the public accusation of a disgraceful act. It is not suggested that this should be sufficient to make the case one of blackmail, provided that there is an honest belief in the validity of the claim. But it does seem to show that the distinction between threatening civil and criminal proceedings has not always the importance in the mind of the victim that the courts attach to it as a matter of criminal law.

Again, the law itself sometimes allows a prosecution to be brought for the purpose of obtaining restitution. In many offences the penalty is payable in whole or in part to the person aggrieved, and a criminal court has in addition certain general powers of awarding compensation to the prosecutor. How can the layman distinguish between those prosecutions in which a compensation order may be made and those in which it cannot?

An argument may also be drawn from the law of contract. A contract to give security for a debt, induced by the threat of prosecuting the other party for a crime which was committed in contracting the debt, has been held to be valid; it is not voidable for undue influence or void for illegality:

Flower v. *Sadler* (1882) 10 Q.B.D. 572, C.A. (The contract is invalid only if the threat is to prosecute someone other than the promisor (*Williams* v. *Bayley* (1866) L.R. 1 H.L. 200), or if the contract is made in consideration of the promisee not prosecuting (in the latter case the contract is void for illegality), or if the crime was not an act which created a civil liability to the promisee.) It is odd if the civil courts enforce a contract that results from what the criminal courts regard as an act of blackmail.

Finally, the decision on this point in *Dymond* seems to be inconsistent with some other authorities. Lord Wright in *Thorne's* case [1937] A.C. 797 at 820, said, as one example of a case where a threat does not constitute blackmail :

> " A man may offer to abstain from prosecuting for a common assault or infringement of his trade mark if he is paid compensation for the civil wrong."

It is true that in this passage the assault specified is a common assault; but there seems to be no difference of principle between a common assault and an indecent assault. Both are torts as well as crimes, so that in both cases the victim of the assault has a legal right to compensation. *Dymond* is also in conflict with the earlier English authorities and with overseas cases following them. In a case before the Supreme Court of New South Wales (*Nicholson* (1868) 7 N.S.W.S.C.R. 155), the prisoner, believing that he had been cheated by the prosecutor at dice, sent him a letter demanding back the money he had lost and threatening a prosecution for fraud if the demand were not complied with. It was held, following *Miard*, that the prisoner's belief that he had been defrauded was a defence. There were, however, dicta that the belief had to be not only genuinely entertained but also reasonable. The latter point was expressly affirmed in a later Victorian case (*Craig* (1903) 29 V.L.R. 28). With all respect, it is difficult to see why this requirement should be insisted upon. It may be thought to be necessitated by the words of the Act, on the ground that " reasonable and probable cause " looks to an objective test and not merely something in the mind of the accused. But there is much to be said for the suggestion of Sir Carleton Allen that in fact the phrase " reasonable and probable cause " is merely an obscure way of saying " without lawful justification " ((1938) 54 L.Q.R. at 16). On this view, it does not settle the question what is lawful justification, which must be decided by the courts on the general principles of criminal responsibility.

It is to be hoped, therefore, that this aspect of the decision in *Dymond* will be reconsidered, and that the criminal courts will cease to regard as blackmail an attempt to enforce a claim of right by the threat of prosecution of the party against whom the right is claimed. In other words, such threats of prosecution should be classified along with threats of civil action in class (3) of the threats described above—threats justifiable if the claim is believed in but not otherwise.

However, a distinction between threats of civil action and threats of prosecution should still be drawn where the proceedings are threatened not against the person from whom money is demanded but against someone else, *e.g.*, his son. A threat to sue the son is a valid way of obtaining payment from the father; a threat to prosecute the son is not. An ambiguous threat to "take proceedings against" the son must be read *in mitiori sensu*, and is valid. *Cf. Williams* v. *Bayley* (1866) L.R. 1 H.L. 200 at 209, where it was said that the contract would have been valid if the bank had said: "If you do not [sign] I shall reserve all my legal rights, whether against yourself or against your son."

It is clear that a threat of prosecution is blackmail, under one or other of the relevant sections, if the property demanded is not thought to be due. For example, although charges for parking on the highway are illegal, local authorities have been known to charge for such parking and to threaten a prosecution for obstruction if the fee is not paid. It is submitted that, in the absence of a belief in right, this constitutes blackmail, even though there is no intention to make a private profit.

The threat of publicity

It is next to be noticed that the actual decision in *Dymond* may be supported on a second ground, namely that there was there not merely the threat of prosecution but the threat of extra-forensic publicity. The accused's letter said that she would "let the town knowed all about your going on." Independently of the threat of prosecution, it is rightly treated as blackmail to attempt to obtain money to which the accused is legally entitled by the threat to accuse of discreditable conduct. In this respect the decision represents a salutary change in the law, and the criticism in the judgment of the decision in *Miard* (above) is from this aspect fully justified. A man of honour who believes that money is owed to him may well threaten a civil action for it, and, if he is not too familiar with legal niceties, he may threaten a prosecution; but he will not use the threat of public vilification as a means of obtaining his demand. The threat of exposure, outside legal proceedings, is rightly regarded as, in general, absolutely unjustifiable, that is to say unjustifiable even though there is a claim of right to the property demanded. It is true that exposure may result from legal proceedings, which may themselves lawfully be threatened. Hence it may be a difficult question of interpretation to decide whether there is merely a threat of legal action with a prediction of exposure resulting from it, or an independent threat of exposure. Subtleties like this are not to be welcomed in the criminal law, but they seem to be inherent in the subject of blackmail.

A further point must now be made. It is not every threat of publicity that suffices to constitute an element in the crime of blackmail. According to *Burden* v. *Harris* [1937] 4 All E.R. 559, following *Hyams* v. *Stuart-King* [1908] 2 K.B. 696, and itself approved in *Norreys* v. *Zeffert* [1939] 2 All E.R. 187 at 189, threats of posting at Tattersall's in respect of gaming debts are lawful. (The actual decision in *Hyams* v. *Stuart-King*, which pertained to the law of consideration in contract, was overruled in *Hill* v. *William Hill* (*Park Lane*), *Ltd.* [1949] A.C. 530 (H.L.); but this does not affect the law of blackmail; *cf. per* Viscount Jowitt L.C. at 542–3, Lord Normand at 562.) Two suggestions may be made for reconciling *Burden* v. *Harris* with the decision in *Dymond*. One is that advanced by Professor Campbell, that the threat of publicity is lawful if the publicity is merely that the other has not paid his legal or moral debt, or satisfied his other legal or moral liability, unlawful if the publicity is that the other has committed an illegal or immoral act, even though such illegal or immoral act was the occasion of the incurring of the liability. Thus if D threatens to post P as a defaulter at Tattersall's in the payment of his gaming debts, the threat is not blackmail, because no one who frequents Tattersall's would think any the worse of P for gambling. The threat is merely to publicise the fact that P has not paid his debt of honour, and this is a legitimate way of securing payment. But if D threatens P that if he does not pay his gaming debts, he will tell P's grandmother that he bets, this is blackmail, for this time the threat is to accuse P. of conduct that, as D knows, will be regarded by the person to whom the accusation is made as immoral and is not merely an accusation of non-payment of a debt. To bring one's debtor before the bar of public opinion for not paying his debt is a reasonable way of getting payment; but not to threaten to accuse him of disgraceful conduct other than the conduct of not paying the debt. In *Dymond* the letter written by the accused was criminal because she threatened publicity for the immoral act of indecent assault; it might not have been criminal had she threatened to publish the fact that the prosecutor did not, like an honourable man, pay damages for his torts. Where the liability arises from a tort, however, it is difficult to separate the two forms of threatened publicity, and it may be a better rule to say that no threat of publicity is justifiable where the alleged liability (legal or moral) arises out of a tort or other legal wrong or moral wrong, except where it is the wrong of not paying a legal or moral *debt.* The liability to pay damages for a tort is not a debt until the damages have been fixed by agreement or by the court. On this view, a threat of publicity made in order to obtain money is lawful only in the case of debts, and then only when it is confined to publicity of the fact that the debt has not been paid. If the demand is for property other than money, the threat, to be lawful, must be of publicity of the fact that the property has not been transferred. Similarly, to anticipate for a moment, if the demand is for an appointment (within the terms of section 31) the threat must be of publicity of the fact that the appointment has not been made. Put in general terms, a threat of publicity, to be valid, must confine itself to publicity in respect of the fact that the legal or moral demand has not been met.

An alternative solution of the problem would be to say that a threat of publicity is lawful only where the publicity is to be effected through social machinery generally accepted for the purpose. Such machinery may be the courts of law, or it may be a sporting club to which the victim of the threat belongs. On this view, a threat to communicate to Tattersall's that the other has not paid a sporting debt is lawful, but a threat to communicate to the world at large by an advertisement in the press that the other has not paid his sporting debt would be blackmail.

The stop-list

The conclusion so far is that in order to obtain the payment of money it is reasonable to threaten a civil action and reasonable to threaten publicity (at least limited publicity) of the fact that an alleged legal or moral debt has not been paid, but not reasonable to threaten other publicity or (if *Dymond* is right) a prosecution. Another kind of threat was considered in *Thorne* v. *Motor Trade Association* [1937] A.C. 797, where the facts were as follows.

The defendant association was established, *inter alia*, for the maintenance of prices of motor-cars. If any dealer sold a car at less than list prices the association could put him on a stop-list, which would mean that he would obtain no further supplies, and thus be put out of business. In order to mitigate this penalty the association devised an alternative. If there were redeeming circumstances, the association would accept payment of a fine in lieu of placing the offender on the stop-list. These rules applied whether or not the offender was a member of the association. In a civil case, the question arose incidentally whether a letter from the association to an offender, demanding a fine as an alternative to placing him upon the stop-list, would amount to an offence under section 29 (1) (i). It was held by the House of Lords that it would not. Putting an offender's name on the stop-list was not a legal wrong, because the members of the association were at liberty to refuse to deal with any person they chose, and putting the offender on the stop-list was only a signification of this refusal. Moreover it was reasonable, by way of promotion of the lawful business interests of the members of the association, to accept a reasonable fine as a lesser penalty than placing on the stop-list. Apparently the decision applies to a case where the fine is demanded from a non-member of the association (*cf.* the words of Lord Wright, [1937] A.C. at 823), though in the case of a non-member there could not possibly be said to be a contractual right to receive payment of the fine. It was said by Lords Wright and Roche that the position would be otherwise if the amount of the fine were unreasonable. The qualification appears to be somewhat anomalous, for in no other instance of an absolutely justifiable threat is there authority for saying that the matter is affected by the amount asked as the price for abstaining from carrying out the threat. For example, D's threat not to sell his property to P unless P pays a high price for it is absolutely justifiable whatever the sum asked.

The decision in *Thorne's* case amounts to saying that it is reasonable to threaten not to deal with the other party on account of his conduct prejudicing your " lawful business interests," and reasonable also to exact money in return for continuing to deal. Other examples of threats not amounting to blackmail, given by Lord Wright (at p. 820), were as follows :

> "[A man] may offer not to build on his plot of land if he is compensated for abstaining. He is entitled to bargain as a consideration for agreeing not to use his own land as he lawfully may, and the other man may think it worth while to pay him, rather than have the amenities of his house destroyed by an eyesore. Or a valued servant may threaten to go to other employment unless he is paid a bonus or increased wages. Or a man may offer to abstain from prosecuting for a common assault or infringement of his trade mark if he is paid compensation for the civil wrong. . . ."

This means that what some people regard as the commonest form of moral blackmail in modern society—strikes for higher wages by persons whose work is essential to the community—is not a criminal offence.

It does not follow from *Thorne's* case that the offer to surrender any legal liberty or privilege justifies a demand for money. As has been seen, a demand for money under the threat of exposure is generally blackmail, although the exposure itself is not a legal wrong. As Professor Campbell puts it ((1939) 55 L.Q.R. 388) :

> "The question we have to answer is not: Had the accused an interest which he could legitimately enjoy? but: Had the accused an interest which he could legitimately surrender for money? And the answer of Lord Atkin is: He had, if the surrender for money of the interest promoted a lawful business interest other than the mere acquisition of money."

The last phrase evidently means "acquisition of money from the prosecutor."

One test whether there was a lawful business interest is whether some material advantage would come to the accused through the carrying out of his threat. If so, he is usually entitled to renounce the advantage in return for the payment of money.

(To be concluded.)

To pg 240

Team Policing

By A. J. PATERSON, B.E.M., M.A., B.L.
Chief Constable of Salford

The System at Work in Salford

The City in which we work

The City of Salford is encircled by the densely populated areas of Manchester, Stretford, Eccles, Swinton and Prestwich. Apart from the River Irwell and the Manchester Ship Canal, there are no obvious and clear-cut boundaries between these contiguous areas which form a sprawling and continuous mass for many miles across South-East Lancashire.

Salford is highly industrialised, its industry ranging from heavy engineering to the making of precision tools and scientific instruments and from weaving of all classes to garment making on the largest scale. It is heavily built up, and it contains important railway marshalling yards and canals which criss-cross the City. It is also an inland port as the principal docks of the Manchester Ship Canal lie within the City boundaries. Ships up to 7,000 tons register and manned by crews of many different nationalities use these docks in the course of their trading to and from all parts of the world.

The important A6 road bisects the City from north-west to south-east and adds its heavy volume of through-going traffic to the normally heavy traffic of a commercial city.

The population of Salford is at present approximately 180,000 and the acreage 5,202. These figures give an average of 34·6 persons per acre, but since the City contains the Manchester Docks, the Manchester Racecourse, canals, large parks and other open spaces, the real average is very much higher. Indeed, in three wards the density of population is 93·6, 77·6 and 74·5 per acre, while recent surveys have disclosed that in some parts of the City there are well over 140 persons per acre.

Most of the streets within the City are small and narrow, the apparent outcome of the piecemeal erection of property and lack of proper planning in the last century. Accordingly, the examination of lock-up property by the police is not an easy task, yet, under the system now in operation, this property gets better protection and more frequent examination than it did in the past.

In this City there are approximately 8,200 premises, such as shops, factories, offices, mills, warehouses, etc., to which police attention must be given during the evening and night. Out of this total, 3,000 are shops, many of which are of so flimsy construction as to provide very little protection against criminals.

The need for a progressive and efficient system of policing which provides maximum supervision and protection to these properties is therefore apparent. For the past five years the team system of policing has been successfully used in this City in the manner described in the following pages.

General Principles of the System

Stated briefly, the principles of team policing as operated in Salford are as follows :—

(1) to deploy or distribute personnel to the best advantage and with the greatest possible effect, *i.e.*, to have constables available or posted in those positions or areas where their services are most likely to be required;

(2) to ensure, so far as practicable, that constables get sufficient work to increase their efficiency, to maintain their interest and to eliminate any danger of boredom;

(3) to broaden the experience of constables by giving them a wide variety of duties;

(4) to avoid routine and unimaginative methods and to introduce an element of surprise so that wrongdoers cannot successfully foretell when or where they may be confronted by a police officer or be caught red-handed;

(5) to instil the ideals of team work and co-operation among all personnel of the Division so that each constable regards his Division as a whole and not merely his responsibility for some small part of it;

(6) to give the best and most expeditious service possible to the general public.

Operational Personnel

Normally, one Inspector is on duty in each Division during each relief. This officer is responsible for the efficient performance of the outside duties of the uniformed police during his tour of duty and for ensuring that the method of policing is appropriate to the circumstances prevailing at that time. Being provided with a wireless-equipped car, he can give adequate supervision and directions wherever necessary, and it is his duty to take charge at the scene of any major emergency. In the absence of the Superintendent and Chief Inspector, he is the officer-in-charge of the Division.

The Sergeant is the team-leader or "Commander in the field." It is important that he should keep a close personal contact with his officers and with his subordinates to ensure that all tasks are efficiently performed and that the deployment of his personnel is completely in keeping with any change of phase or conditions which may have occurred. By his own example, he can stimulate his men to activity and imbue them with a high sense of duty. Under the team system, the Sergeant has ceased to be a "booking machine" with but a vague and tenuous contact with his subordinates; he is now given, and accepts, responsibilities which permit him to display individuality and initiative and to show himself worthy of promotion to a higher position. As team leader, he spends an appreciable time on foot and his whereabouts are always known to the car driver who can quickly get in touch with him if the need arises. Since he is responsible for the disposition and duties of his men, he keeps in constant touch with them, giving whatever advice or instruction may be needed in any special case. In this way he quickly becomes intimately acquainted with the character, temperament and ability of each of his men and is therefore in the unique position of being able to take positive measures, whether by advice or instruction or by employment on any particular duty, to remedy any defect or omission in the make-up or experience of any of his men. By imparting his own knowledge and by careful grouping of the members of his team, he can ensure that the younger constables can gain confidence and experience in a remarkably short time.

Apart from any detailed instructions which the Sergeant may give in any particular instance or instances, each constable is given freedom of action and discretion in patrolling the area assigned to him. He is made to feel that he can carry out his duties with initiative and common sense, not bound by instructions which impede movement and preclude the exercise of initiative. Indeed, as a member of a team he is encouraged to cultivate a resilient state of mind and to avoid any tendency to slip into a rut of unimaginative routine when discharging his duties.

Briefing of Sergeants and Constables

Each Police Division is split into two sub-divisions in each of which there is a police office at which the Sergeant and his men parade for duty.

On parading for duty, the Inspector and Sergeant carefully review all factors affecting police duty. This analysis will involve consideration of the prevailing policing phase, the current state of crime within the Division, City and neighbouring police areas, the general incidence, type and localities of crime and street accidents, the number and type of complaints by the public of general nuisances, and any other matters requiring police attention. In this connection, considerable assistance is derived from the local information and instructions published within the Force and from the crime map which is kept up to date at each Divisional Headquarters. The Inspector then briefs the Sergeant as to the general and any specific duties to be undertaken by the team during their tour of duty. Following upon this, the Sergeant decides (subject to any specific instructions he may have received from the Inspector) the manner in which he can most effectively deploy the men under his command. It is to be understood that each Sergeant has his own method and that individuality is encouraged.

The Sergeant then parades his men and gives each precise instructions as to the extent or boundaries of the area he is to " work," the matters to which he must give particular attention, and a general indication of the prevailing policing problem and the part he is required to play in the team's tackling of that problem. In some cases, the Sergeant may give these instructions by telephone. Thus, although individual responsibility for a definite area is retained as in the beat system, the ideals of team work and co-operation form the basis on which all duty is performed.

It has been found from experience that the best results are achieved when the Sergeant's team does not exceed nine men. Such factors as the extent of the area to be covered, the normal incidence of crime and other occurrences, and the number of men to be supervised or employed are matters to be given due weight when fixing the areas to be assigned to individual teams.

The following is an example of the " briefing sheet " which the Sergeant usually makes out in duplicate in order that the telephone operator can make the necessary entries in the

"Operational State" without a verbal explanation requiring to be given to him.

Briefing Sheet (4.0 *p.m. relief*)

ORIGINAL ASSIGNMENTS

P.C.s 82, 325, 140	Traffic	70 Box
P.C.s 138, 205	Traffic	Adelphi
P.C. 345	Adelphi Street/Silk Street	
Sgt. Mills, P.C. 136	Mobile	

2ND SERIES 7.45 p.m.

P.C. 325	St. Stephen Street—Chapel Street—Blackfriars Road.
P.C. 140	Adelphi Street—Peru Street—Brewery Street—St. Stephen Street—Chapel Street.
P.C. 138	Crescent—Albion Street—Liverpool Street—Oldfield Road.
P.C. 205	Chapel Street—71 to 77 box.
P.C. 345	Chapel Street—Irwell Street—River Boundary to Palatine Bridge.
Sgt. Mills	P.C.s 136 and 82, Mobile—Greengate—Chapel Street—Blackfriars Road.

SUBSEQUENT SERIES

(1) St. Simon Street — Springfield Lane — Greengate — Blackfriars Road.
(2) Peru Street—Brewery Street—St. Stephens Street—Blackfriars Road—Silk Street.
(3) Cross Lane — Liverpool Street — Albion Street — Windsor.
(4) Irwell Street—Chapel Street—Middlewood Street—Railway Boundary.
etc.

The second series of assignments on the sheet are those which the Sergeant intends his men to carry out on completion of their original assignments, provided no unforeseen event takes place to upset his plans. They are given to the telephone operator at this stage so that he may, in the event of the Sergeant becoming engaged at any incident, issue the necessary instructions and thereby obviate delay.

Every constable is instructed to ring his Divisional Headquarters immediately he completes his assignment; he already knows, of course, that he may ring at any time during the course of his duty, whether for assistance or advice or further instructions or merely to indicate his precise whereabouts at that particular time.

The Sergeant carries a small map of the section on which he is engaged. On the allocation of men to each area, a boundary is inscribed with a "chinagraph" pencil on the transparent cover of the map and the constable's number is inserted therein. On the completion of the operation the area is crossed out. Two advantages are obtained by using this map. First, it serves as a ready means of recording deployments without recourse to memory. Secondly, it enables the Sergeant, on his becoming engaged at any incident where his presence is likely to be required for an appreciable length of time, to hand over a general picture of what has been done, the places where the men are deployed, and what remains to be done in the section.

Subject to any directions he may receive from his senior officers, the Sergeant is responsible for making such alterations in the disposition of his men as conditions may warrant. Obviously, change merely for the sake of change would be futile, and, therefore, the transfer of a constable from one area to another is not occasioned by whim or fancy, but by reason of events or circumstances affecting the policing problems of the moment. It is also apparent that the number of such transfers must vary from phase to phase and from day to day. In any event, when it becomes necessary to effect such a transfer or to adjust the boundaries of the area in which the constable is already serving, the Sergeant again explains the duties which will be expected to be performed by the constable in his new or adjusted area and the latter is therefore kept entirely in the picture as to what is happening in his sub-division.

(*To be concluded.*)

The Towpath Murder

By H. B. WALTON, *Barrister-at-Law*
and C. DOHERTY

R. v. Whiteway

The case of *R.* v. *Whiteway*,[1] which came to be known by millions of readers of the popular Press as the "Towpath Murder," will be remembered by lawyers not so much by reason of the legal points raised in the course of the trial, but for the appalling cruelty displayed by the murderer in order to satisfy his lust and for the vigorous attack by counsel for the defence on the police officers in the case with regard to Whiteway's confession. Nevertheless, the case raises points which, if not of great importance, are at least of great interest to the lawyer, and which the writers have attempted in the following pages to analyse from a forensic point of view.

Alfred Charles Whiteway, a 22-year-old labourer, was committed for trial by the Richmond magistrates on two separate indictments charging him with the murder, on May 31, 1953, of 16 years old Barbara Songhurst and 18 years old Christine Reed, whose bodies were recovered from the River Thames at Richmond. It was clear from the condition of the bodies that both girls had been rendered unconscious by a severe blow on the head with a blunt instrument, such as the back of an axe, before being raped, stabbed and flung into the river. However, as is customary in English law, the trial proceeded on only one charge of murder, that relating to Barbara Songhurst, although the prosecution could make no distinction between the evidence concerning the two girls. The evidence adduced by the prosecution which related to Christine Reed was not objected to by the defence for there can be little doubt that the evidence on both would have been held admissible on the trial of either.

It is not often that in trials for murder the prosecution are able to adduce direct evidence of the crime,[2] and since in Whiteway's case there was no eyewitness of the murder, the evidence upon which the prosecution relied was necessarily circumstantial. The evidence had to convince the jury, not of the fact that the murder had been committed (which was not disputed) but of the fact that Whiteway was the man who had committed it. Prosecution evidence was brought to show (1) that the accused had the opportunity of committing the murder; (2) that he had the means of doing it; (3) that he had a motive (although the prosecution were not bound to prove this); (4) that he had made a number of statements to the police, of which at least one amounted to a confession; and (5) that he had human bloodstains on one of his shoes. Moreover, evidence was available, though this was to be held inadmissible, (6) that the accused had on a recent occasion attacked and raped a young girl, first striking her on the back of the head with an axe.

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[1] See *The Times*, October 27 to November 3, 1953, and [1954] Crim.L.R. 143.

[2] *R.* v. *Craig* (1953) (unreported), in which a police officer was shot and killed in a roof-top gun-battle, is a recent example of direct evidence of a murder being available.

Thus, no questions of law, except those concerned with the admissibility of evidence, arose during the course of the trial. The question whether Whiteway was guilty or not guilty of murder was entirely a matter of fact and for the jury.

Opportunity

The prosecution evidence will now be dealt with point by point, together with the answer by the defence to each point.

The prosecution evidence of opportunity rested on the fact that Whiteway was a local man and therefore knew the area well and that he was in the vicinity of the place where the crime was committed at the time it was committed. The two girls had spent most of Sunday, May 31, with three youths named Wells, Sparks and Warren who were spending the weekend camping near the river at Teddington. They left these youths between 11 and 11.30 p.m. on their bicycles and were heard cycling along the towpath by a Mr. Nixon, who was sitting with a lady friend a few feet from the river. He estimated the time as being about 11.30 p.m. The girls were never seen alive again, and the next morning the body of Barbara Songhurst was recovered from the Thames. The medical evidence was consistent with the time of death being about 11.30 p.m. Whiteway's defence was an alibi and the vital time with respect to the alibi was about 11 to 11.30 p.m.

The defence relied upon the evidence of Whiteway's wife, his mother and his uncle to show that he left his wife at Kingston at about 11.30 p.m. and arrived at his home in Teddington at about 11.45, and argued that the crime could not have been committed in the available time. It was also suggested that the evidence of Mr. Nixon was unreliable and that the crime might have taken place very much later than 11.30, perhaps even as late as 1 a.m., when Whiteway was certainly at home.

The defence also showed that there were many other people who were local men and had the opportunity of committing the crime. The evidence of two witnesses, Cunningham and Kilcoyne, who were camping nearby, showed that there was a tent with a light in it extremely close to the scene of the crime at either 10.45 or 11.15. There were also other people known to have been nearby, for example, the three boys at whose camp the girls had spent the evening, the Mr. Nixon mentioned above, and a mysterious person seen by the landlord of a public house near the foot-bridge at Teddington.

All this evidence tended to reduce the weight of the prosecution evidence by showing that the prisoner was by no means the only person with the opportunity of committing the crime.

The means

The prosecution called evidence to show that Whiteway had the means of committing the crime. The medical evidence was that both the girls had been struck on the back of the head with a blunt instrument such as the back of an axe before being raped, stabbed and flung into the river. Whiteway had such an axe in his possession at the time of the murder. It had subsequently come into the possession of a police officer who had found it lying on the floor of a car in which Whiteway was taken to Kingston police station in connection with an earlier attack upon a young girl. Unfortunately the officer concerned had taken the axe home where he had used it for chopping firewood, so that any traces there might have been of finger-prints, blood-stains or hairs had been destroyed. Further, the medical evidence showed that the axe which inflicted at least one of the injuries must have been very sharp and, of course, Whiteway's axe when recovered was blunted by use.

It was the case for the prosecution that this axe had been used by Whiteway in his attack on Barbara Songhurst and Christine Reed. It was the case for the defence that, although some of the injuries to the two girls were consistent with having been inflicted by that axe, they could have been inflicted by another axe or another instrument. To this end, the defence established that there was in fact an axe with which the injuries could have been inflicted at the encampment of the three boys, Wells, Sparks and Warren.

The prosecution, further, were able to prove that Whiteway was very interested in knives, and that a few weeks before the crime he had in his possession a long double-edged knife with which the stab wounds to the girls could have been inflicted. This knife was not an exhibit in the case as it was never found.

Motive

Although it is not for the prosecution to prove motive in a murder trial, it was an integral part of the Crown's case that the man who had raped the two girls was the same man who murdered them. The defence, therefore, tried to establish that sexual intercourse had taken place with the girls at the camp of Wells, Sparks and Warren.

Wells was asked if he had kissed either of the girls or if there was any love-making, and he said there was not. They just sat around the camp fire talking. He denied that either he or his companions had sexual intercourse with the girls. Warren and Sparks were asked similar questions and both denied that sexual intercourse had taken place with the girls. Sparks, however, admitted that he had kissed Christine Reed several times.

The prosecution case was, in effect, that Whiteway murdered the two girls because he recognised one of them during the act of rape, so that she would not subsequently be able to identify him as her attacker (Barbara Songhurst had, in fact, lived in the same street as Whiteway eight years previously). The defence tried to cast doubt upon the motive by showing that there were other people in the vicinity who desired sexual intercourse with these girls, and who might have murdered them for similar reasons. It was not suggested by the defence that Wells had committed the murder, but that the campers, of whom Wells was one, had the opportunity of, the means of, and the motive for committing the crime.

Confession statement

The crucial part of the case lay in the confession alleged to have been made by Whiteway to Superintendent Hannam while Whiteway was in custody, and after the Superintendent had laid on the table before Whiteway the axe which had been in his possession and had told Whiteway that blood had been discovered on his shoe.

The statement made by Whiteway (Exhibit 24 in the case), to which the defence objected, was as follows [3]: "It's all up. You know bloody well I done it, eh? That shoe's buggered me. What a bloody mess. I'm mental. Me head must be wrong. I must have a bloody woman, I can't stop meself. I'm not a bloody murderer. Block 'em yes, every time, but not kill 'em. I only see one girl, she came round the tree where I was stood and I bashed her no harder than that other kid and she was down like a log. Then the other screamed out down by the lock. Never saw her till then I didn't. I nipped over and shut her up. Two of 'em, and then I tumbled the other one knew me. If it hadn't been for that it wouldn't have happened. Put that bloody chopper away it haunts yer. What more do they want to know? I blocked 'em both, that is what I can't stop. Why don't the doctors do something? It will be mental, won't it? It must be. I cannot stop it. Once yer tell you sods a bloody lie, buggered for ever. Give us it, I'll sign it."

This statement which had been written down by Superintendent Hannam was signed by Whiteway. This statement, together with other statements made by the prisoner, was objected to by the defence, and the jury retired to their room while legal argument was heard by the judge alone.

The case for the defence was that the statement set out above had been fabricated by the police, placed in front of Whiteway and signed by him with no knowledge of its contents. Further, all the statements made to Superintendent Hannam were objected to on the ground that they were obtained as a result of question and answer, and that they were taken in the course of interviews extending over periods of up to twelve hours, while Whiteway was already in custody on other charges.

Statements obtained by means of question and answer are not necessarily inadmissible, but a prisoner making a voluntary statement should not be cross-examined.[4] Judges have a wide discretion to exclude or admit statements made by a prisoner, but it is usual to exclude statements made contrary to the Judges' Rules.[5] Thus, if the defence had been able to show that Whiteway had made his statements under such cross-examination as would render them involuntary, they would no doubt have been held inadmissible. Counsel for the defence submitted that there was a limit to which the police were entitled to go, and said that they were not entitled to ask questions to trap persons or to have a preliminary inquiry. Similarly, if the statements had been obtained as the result of an inducement held out by a person in authority (and a police officer is such a person), they would have been held inadmissible.[6] But the Judges' Rules are not rules of law; they are rules for the guidance of the police. In *R.* v. *Knight and Thayre* (1905) 20 Cox C.C. 711, a statement made by a prisoner in answer to the questions of a person in authority was held inadmissible on the ground that there was reason to suppose that some pressure was exercised by the questioner in order to induce the prisoner to make admissions. In that case, however, the prisoner was continually questioned for a period of six hours and was given no food.

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[3] In giving the judgment of the Court of Criminal Appeal Lord Goddard C.J., before reading the statement, said: "I am going to read the whole statement in spite of some of the filthy expressions in it and so on, because it is as well that it should be read."

[4] See Rule 7 of the Judges' Rules: Archbold, 33rd ed., 415.

In order to ascertain the circumstances in which a statement has been made, it is usual to call the police officer before whom it was made, so that he may be examined and cross-examined by counsel in the witness-box. In *Whiteway's* case Superintendent Hannam was vigorously cross-examined by counsel for the defence in the absence of the jury in order to show that the statements were fabricated by the police, that they were obtained by cross-examination, or that some inducement was held out to the prisoner to get him to make a statement. On the latter point, it was put to Superintendent Hannam that he told Whiteway that if he made a statement admitting the crime, the whole matter would be cleared up in three days, and he would be regarded as insane.

Superintendent Hannam denied all these suggestions, and the judge thereupon held his evidence to be admissible without calling on counsel for the Crown. The jury then returned to hear the Superintendent's evidence, and much of the cross-examination was repeated before them.

Blood-stains

The evidence adduced for the Crown that Whiteway had human blood-stains on one shoe was contested by the defence.

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[5] *Ibid.* 414–17.

[6] *Ibid.* 410.

Mr. Nickolls, giving evidence for the Crown, said he examined a pair of brown shoes belonging to Whiteway. On the right shoe there was a strong reaction for blood round the sewing near the lace tags and also round the outside edge of the junction of the sole and the upper, and on the inside edge. He took the shoe to pieces and in the dust round the stitching holding the upper to the sole, he identified the presence of human blood. The type of reaction was similar to that expected if the shoes had been extensively blood-stained and subsequently washed or rubbed in very wet grass. There was no blood on the left shoe. Mr. Nickolls described in detail the various tests he carried out.

Mr. Nickolls, however, failed to find any blood-stains on Whiteway's clothing. But as counsel for the Crown pointed out, there was no evidence that the clothing examined by Mr. Nickolls, and taken from Whiteway some weeks after the crime was committed, was the same as that being worn by Whiteway on May 31. Counsel for the defence, on the other hand, asked the jury whether it was likely that a man could commit those murderous assaults without getting some blood on his clothing.

In cross-examination, Mr. Nickolls said that the first test he made on the shoe was called the benzidine test, and that that test might give a reaction to a number of other materials. He also referred to other scientific tests which he had carried out.

Dr. David Haler, who was called as an expert witness for the defence, said that the benzidine test, was not necessarily reliable in determining the presence of blood. The juice of grass, horse-radish, oranges, lemons and certain vegetable weeds gave a similar reaction. Dr. Haler, however, on being cross-examined, said he accepted Mr. Nickolls' evidence with regard to the presence of human blood.

Whiteway in the witness-box told the jury that he was unable to account for the blood on his shoe, and suggested that it might have got there when he cut himself on some occasion.

The previous rape

The prosecution sought to call as a witness a fourteen years old schoolgirl, Kathleen Ringham, who had been attacked and raped by Whiteway on Oxshott Heath on May 24. Counsel for the defence objected to this evidence, but the judge ordered that she should be sworn and when that part of her evidence was reached to which exception was taken he would deal with the matter.

Kathleen Ringham then entered the witness-box, was sworn and said in evidence that on Whit Sunday she went for a walk on Oxshott Heath with her dog. There she saw a man. At this point counsel for the defence formally repeated his objection and the jury retired while legal argument was heard.

It may be that the course which the judge took gave the jury an opportunity of guessing what Kathleen Ringham's evidence would have been. It may be that it would have been less prejudicial to the prisoner if the jury had retired before the witness had been called into the box. Be that as it may, the rule of procedure was not violated since the inadmissible evidence was not heard by the jury.[7]

Counsel for the prosecution, in the absence of the jury, told the judge that Kathleen Ringham would have said that she heard someone walking behind her on that morning on Oxshott Heath. She looked round, saw the accused on a bicycle and felt a blow on the back of her head. She saw a chopper which looked exactly like the one Whiteway had in his possession (and which was Exhibit 15 in the case). She was dragged into the bushes. She was asked to take down her knickers and refused. She was held tightly round the throat by Whiteway's hands which were gloved. He took her knickers off, then he took off his own white shorts, raped her, and then later, when she felt giddy as a result of the blow on the head, he allowed her to stand holding on to a branch while she clothed herself. Then he went to see if anyone was coming, got on his bicycle and went away. She later identified Whiteway as the man who had attacked her.

Counsel for the prosecution argued that Kathleen Ringham's evidence should be admitted and enumerated in support of his argument the similarities between the murder being tried and the case of Kathleen Ringham. The similarities were said to be: (i) the girls were all young; (ii) they were virgins and might well have been expected to be virgins; (iii) the *nexus* of time was very close, one on Whit Sunday,

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[7] A report had been published in *The Times*, September 10, 1953, stating that Whiteway had been committed for trial at the Central Criminal Court on a charge of carnally knowing a fourteen-year-old schoolgirl without her consent and against her will at Oxshott Heath, Esher, on May 24. It was argued on appeal that the jury must have known of this earlier matter and that the schoolgirl's evidence must have created prejudice in the minds of the jury.

May 24, the other on the following Sunday, May 31; (iv) the venue was much alike: Kathleen Ringham was assaulted on Oxshott Heath, and the two girls on the towpath by the river Thames; (v) the method used, it would seem, was the same in every case. There was no conversation with Kathleen. The first she knew was a blow on the back of the head. There was no evidence that the two girls on their bicycles were questioned or invited to enter into any conversation. They both received on the head violent blows which would render them unconscious, with a weapon such as the back of a chopper, such as Exhibit 15. Then there was evidence that in the case of these two girls their trousers were pulled down or removed. In one case the knickers were also removed, in the other case there was such violence that the crutch strap broke. In each case the girl was violently raped. The difference was that in the case of Barbara Songhurst and Christine Reed there was stabbing, whereas in the case of Kathleen Ringham there was none.

Counsel for the defence submitted that this evidence was not relevant and that, even if it was, it should be excluded on the ground that it would be so prejudicial to the accused as to be disproportionate to its value.[8] He further submitted that there was no conclusive evidence that the girls had been struck with an axe. All that Dr. Mant, the pathologist called by the Crown, had said was that the injuries were consistent with having been made by the head of an axe. They could have been caused by many other instruments.

In the case of *R.* v. *Straffen* [1952] 2 Q.B. 911; 36 Cr. App.R. 132, the similarities were stated to be that in each case the victim was a little girl who had been killed by manual strangulation, and that in no case was there any attempt to hide the body or to interfere with it. In no case was there any sign of a struggle. On those similarities, the evidence of similar facts was held to be admissible on the question of identity.

After hearing the arguments by counsel, the judge decided that, having regard to Dr. Mant's evidence, Kathleen Ringham's evidence should be excluded. It may well be that, if Dr. Mant had been able to say that the injuries to Barbara Songhurst had been caused by the axe, Exhibit 15, the judge would have decided there was a sufficient *nexus* between the cases and would have held the evidence to be admissible. He had only been able to say in evidence that the injuries were consistent with being made by that axe and might have been caused by many other instruments. There was, therefore, in the view of the court, not sufficient evidence of "abnormal propensity" to show that it was the same man in each case.

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[8] Viscount Simon said on this point in *Harris* v. *Director of Public Prosecutions* [1952] A.C. 694 at p. 707, that it was the duty of the judge to set the essentials of justice above the technical rule if the strict application of the latter would operate unfairly against the accused.

It remains only to say that, after a trial lasting six days, Whiteway was found guilty by the jury on November 2, 1953, and sentenced to death. His appeal to the Court of Criminal Appeal was dismissed on December 7 ([1954] Crim.L.R. 143), and he was executed on December 22, 1953.

A Day in a Police Court

By A. E. JONES
Magistrates' Clerk

The series of which this is the third instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Applications

"Silence. Stand up, please." called Sergeant Quing loudly. A scraping and shuffling broke the previous quiet of the court room as the assembly of applicants rose awkwardly to its feet. Mr. Sutterthwick, the magistrate, walked to his chair, bowed and sat down. The clerk slipped into his seat just below the bench. At a motion from the warrant officer everybody subsided except Mr. Bengham, a member of one of the firms of solicitors which had offices near the court.

"I'm applying, sir," he said, "on behalf of Mrs. Cutler of 7, Lower Road, for a summons against her husband for persistent cruelty. I'm satisfied there is a prima facie case, sir."

"Very well," said Mr. Sutterthwick. Mr. Bengham sat down and the prosecuting solicitor for the borough council rose from beside him to apply for two summonses, one against a dairyman for selling milk with added water, and the other against a landlord to abate a nuisance caused by the leaky roof of a decrepit but profitable tenement house. The summonses granted, both solicitors made their way to the general office to give the necessary particulars, arrange dates of hearing and pay the prescribed fees.

Three people with forms to be signed by the magistrate were next called forward from the back of the court by Sergeant Quing. The first was a little man with Central European features and an unpronounceable name who had come to take the oath of allegiance and thereby complete the last step in the process of acquiring British nationality. After he had painfully enunciated that he would "true allegiance bear to Her Majesty, Queen Elizabeth the Second, Her *Hairs* and Successors," his place was taken by the remaining two declarants. They had only one form between them and their purpose was to put on record what seemed to the court a remarkably frequent occurrence in the neighbourhood—the loss of a pawnticket. The signatories to this document were mother and daughter—the latter to state her loss and the former to confirm that she was the person she claimed to be. When they had both, in answer to the clerk's question, agreed that they "solemnly and sincerely declared" the truth of what they had signed, the magistrate added his signature to the form which then became a substitute for the original ticket. Mother and daughter departed with an apologetic giggle and the warrant officer motioned forward into the witness box a stout woman with a harassed expression.

Domestic troubles

"This applicant is Mrs. Bristow, sir," he said. "She's been apart from her husband for fourteen years and hasn't seen or heard anything of him since they separated. She's become friendly with another man recently and he wants to marry her. She wishes your advice, sir, on whether she's entitled to marry him."

Mr. Sutterthwick knew the answer almost by heart. In some parts of his district husbands and wives seemed to get lost as easily as pawntickets. "Well, madam," he said, "if you married this other man now and your first husband turned up later on, you couldn't be convicted of bigamy providing you had, in fact, been away from your husband at least seven years at the time of the second marriage and didn't know he was alive during that time. But even though you wouldn't be punished for the second marriage, it would still be invalid if your husband was, after all, alive at the time it took place. That's the risk you run."

"What about if we had any children, sir?" inquired the applicant.

"I'm afraid they'd be illegitimate if your first husband isn't dead, and they wouldn't be made legitimate even if there was a divorce and you married the other man properly. That's part of the risk."

"Well, it seems very hard, sir," said Mrs. Bristow. "Just when I've got a chance to be happy. Mr. Bristow was a beast to me. That's why I left him. He never kept me and was always telling me to go and sling my hook, and saying I was no use to him."

"Ah, that's another matter. Even if you don't know where he is you might be able to take divorce proceedings against him. You may have a case for cruelty or desertion on what you say. You can also get a divorce if the court will presume your husband's death from the fact that he hasn't been seen or heard of for seven years. You should see a solicitor about all that."

"I'm afraid I couldn't afford it, sir."

"Try the Legal Aid Committee. The Probation Officer will give you the address."

"And what am I to do in the meantime, sir? You see, my gentleman friend may not be willing to wait. Shall I marry him and then try for a divorce?"

"That's rather putting the cart before the horse, isn't it? I'm afraid you might not get your divorce if you did that."

"Well, what would you advise me to do, sir?"

"I can't take the responsibility of giving you that sort of advice. I can only tell you the legal position and now you must make up your own mind what to do. It's your life, not mine."

Mrs. Bristow seemed half disposed to stay and argue but a sign from Sergeant Quing indicated that the interview was over and she gave place to an elderly woman with a tired, patient face.

"Mrs. Denham for a summons for arrears against her husband, sir," said the warrant officer. "£9 owing, payable through the court. It's a regular case, sir."

"When did you last have any payment from him?" inquired Mr. Sutterthwick.

"Last Monday week, sir, and then it was short money; he's always playing me up like that. He's in regular work but he swore I'd never get any money out of him when I took him to court for the order. I shall have to go on the National Assistance. I can't keep on running into debt."

"All right, Mrs. Denham. Take your summons, and remind me of what you've just told me when the case is heard."

"Next application is one of Miss Garrafrey's cases, sir," announced Sergeant Quing. A blowsy, moon-faced young woman stepped into the witness box carrying a neat little baby, and the probation officer said "This girl is applying for a summons for an affiliation order, sir. She's a single woman and there is corroboration; he's admitted paternity to her mother."

"Summons granted," said the magistrate.

There followed another mother and child, but the infant this time was twelve years older. He was dressed in his Sunday best and his hair had been plastered down with a wet brush.

"This lady," said Sergeant Quing, "complains that another lady living in the same block of flats attacked her son—the lad here—and hit him on the head, giving him earache. She asks for a summons for assault."

Mr. Sutterthwick, from long experience, diagnosed trouble between children. "What had you been up to, laddie?" he inquired.

"Nothing, sir."

"They were just playing together as children will," amplified his mother. "This other boy kept teasing Georgie and Georgie just picked up a piece of wood—quite a small piece—and gave him a tap with it, but he didn't hurt him really, only he went crying to his mother and she came rushing down and laid into my boy and she's no right to do that. She should come to me if she's got any complaint to make."

"How old was this other boy, Georgie?" asked Mr. Sutterthwick.

"Six, sir, I think."

"Oh. And how had he been teasing you?"

"He kept cheeking me, sir."

"I see. And do you think it's the right thing to do to hit a little chap half your age with a piece of wood because of that?".

"No, sir," said Georgie sheepishly.

"The other boy's a big boy for his age and Georgie's small and he's always been delicate," put in his mother.

"Well," said the magistrate, "I don't think it will do much good taking out a summons. You're quite right that this other lady shouldn't have taken the law into her own hands, but I don't believe your lad had been behaving as he should. I'll send one of the warrant officers down to warn her that she mustn't do anything like this again."

"All right, sir, if you think that's best."

"I do. . . . And mind you don't spoil Master Georgie."

"Oh no sir, I never do. He's a very good . . ." Sergeant Quing correctly interpreted the look that Mr. Sutterthwick directed at him, and with a "That'll be all, madam," he cleared the way for a pale and worn-looking woman, introduced as "Mrs. Varley, one of Mr. Thorburton's cases." She stood silently in the witness box in an attitude conveying a lifetime of resigned acceptance, while the probation officer rose and said "This lady, sir, is asking for a summons against her husband for desertion. He left her three years ago actually. There are two children of the marriage and they are with her. She doesn't know where he's living now, but she knows where he's working."

"Why did he leave you? Do you know?" asked Mr. Sutterthwick.

Mrs. Varley appeared slightly troubled and smiled apologetically, but said nothing.

"She's rather deaf, sir," said Thorburton. The magistrate repeated his question in a raised voice.

"I suppose it was just the usual thing," she replied sadly. "They get tired of you after a time. We've been married twelve years, you see."

"She thinks he went off with another woman," explained the probation officer.

"Why haven't you come to the court before this?" asked Mr. Sutterthwick.

"Well, sir, he paid me thirty shillings a week pretty regular and I was working, but now I've had to give up my job because I'm going to have a baby and when I asked him for more money he said he couldn't afford any more."

"But how is it you're going to have a baby if your husband deserted you three years ago?"

"Well, you see, sir, he used to come and see me and the children when he paid me the money and sometimes he wouldn't give me my wages unless I let him use me."

Mr. Sutterthwick mused a moment, but not on the philosophy of sexual relations implicit in the applicant's words. He was considering the attitude of the law to the situation.

"I suppose it is desertion?" he murmured, bending towards the clerk.

"I don't think it can count as cohabitation on the decided cases, sir," replied Frell.

"What about the suspected adultery?" said the magistrate to Thorburton. "Can't she get any evidence to prove that?"

"I'm afraid, sir, the difficulty is that, as she doesn't know where he's living she can't say it's still going on. She couldn't prove adultery in the last six months."

"Very well. She'd better have her summons for desertion then."

Mrs. Varley took her slip of paper humbly from the warrant officer, started to go in the wrong direction for the general office and became overwhelmed in apologetic confusion when put right.

Domestic troubles with a difference

"I think I'd better leave the next applicant to explain her business herself," said Sergeant Quing with a smile. "It's Mrs. Harris, your worship."

The little, greyhaired woman who now stepped forward clutching a bag from which protruded a sheaf of legal-looking documents needed no other introduction.

"Good morning, sir," said the applicant brightly to Mr. Sutterthwick.

"Good morning, Mrs. Harris," he replied. "What can I do for you today?"

"I want a summons against my landlord, sir. I'm being poisoned. It's the water, sir. It makes me ill every time I touch it. Even if I just wash in it. I've brought a bottle of it, sir, for you to try it and see if I'm not right." She produced a small medicine bottle.

"You've brought it to the wrong place, I'm afraid," said the magistrate gently. "You should take it to the town hall. It's their job to look after the purity of the water supply, not mine."

"I've been there, sir, and they sent me to you."

"But I'm afraid I can't help you."

"Well, what can I do, sir? I can't go without water, can I?"

"I should try boiling it, Mrs. Harris. I expect it will be all right then."

"I can't afford to pay for the extra gas to do that, sir. Can I have an increase of my order, sir?" Many years ago the court had made a maintenance order against Mr. Harris after he had deserted his wife.

"I can't give you a summons to have your order varied unless there's been some change in circumstances since the last time it was varied."

"He told you a lot of lies then, sir."

"I daresay he did. Many people do. But unfortunately it has to be proved that they're doing it. Can you do that, Mrs. Harris?"

"Yes, sir. He's got three banking accounts. If you give me witness summonses against the bank managers, I can prove it all right."

"How do you know he's got three banking accounts?"

"I've been told so."

"By whom?"

"Everybody knows it."

"What's the name and address of one person?"

"Oh, I don't know all their names and addresses."

"Well, now, you go off and find out the name and address of one of them, Mrs. Harris, and then come back and see me. Good morning."

"Good morning, sir. Thank you," and with a parting smile to the warrant officer, Mrs. Harris left the court.

Next it was a protegée of Miss Garrafrey's who came forward. "This young woman," said the probation officer, "has a child of four by a man with whom she lived for seven years. They parted some time ago and the applicant doesn't want to have anything more to do with him. But he keeps coming round to her address—he says he wants to see that the child is being properly looked after. He's made several disturbances, according to her, accusing her of neglecting the child and it's causing trouble with her landlady."

"He's no business to go round there if she doesn't want him," said the magistrate. "He hasn't any right to interfere in the upbringing of the child." He turned to the woman and continued "You understand? I'll send a police officer down to explain the position to him and warn him that he mustn't do anything that's likely to lead to a disturbance."

"Thank you, sir."

"Have you got an order against him? Is he paying anything for the maintenance of the child?"

"No, sir."

"Why not? Why don't you take a summons against him if it's his child?"

"Well, sir, he says I don't dare take him to court because you would never let me have the child if I did."

"What does he mean by that?"

The applicant leaned forward confidentially. "You see, sir," she explained apprehensively, "I was in a mental deficiency place once and he knows that and he said I wouldn't be allowed to have my baby if the court knew it."

"Don't you worry about that. As long as you look after your child properly you've got nothing to fear. You go away and have another talk with the probation officer about applying for an affiliation order against this man. Perhaps you'll change your mind and decide to take a summons after all. Meanwhile I'll have him warned to leave you alone."

The applicant left the court with Miss Garrafrey, somewhat relieved, but with a vague feeling that there must be a catch in it somewhere.

Summonses and warrants

There remained now only the informants whose applications for warrants had already been considered by the magistrate in his room. He granted the police application for a search warrant for stolen goods after the detective sergeant had duly sworn that his statement was true "to the best of his knowledge and belief." Another detective officer then shepherded into the witness box the one-legged man who had lost his money in the handbag business.

"I suppose the present address of the defendant in this case is known?" inquired Mr. Sutterthwick of the officer.

"Yes, your worship," was the reply.

"Any reason why a summons shouldn't issue instead of a warrant?"

"Well, your worship, it's a serious charge and he might abscond when he knows that proceedings have actually been started."

"I hardly think he'd be so stupid, judging by the way he's behaved so far. Anyway if the summons can't be served or he doesn't answer it, you can have your warrant then."

The magistrate turned to the man in the witness box and added gently "I want to warn you that yours will be a difficult case to prove. Don't expect too much from this prosecution."

And now, modestly last, rose the spokesman of the court's only wholesale customer for summonses. It was no hardship, however, for Inspector Campting to come at the end of the applicants for he would stay on in his box throughout the morning session. "On behalf of the police, your worship," he announced "I beg to apply for nineteen summonses for various traffic offences, one for having no dog licence and two against a refreshment house keeper and the owner of an automatic machine for permitting gaming with it."

"Certainly," said Mr. Sutterthwick, and upon the word Sergeant Quing moved to the door opening on to the waiting hall. Applications were over and the court room was now open to the public. "Quietly please and take your hats off," called the warrant officer as a rush threatened to develop for the best positions at the back of the court.

Sleep of the Just

In order that Mr. Justice Stable and Mr. Justice Lynskey may sleep undisturbed at the Judges' Lodgings a few hundred yards away from Lincoln Cathedral, the cathedral bells, which normally strike the quarters, and Big Tom, which sounds the hours, are being stopped from 8 p.m. to 8 a.m. each day during the assizes which began yesterday.—*The Times*, February 10.

"This and That"

Having just read that wholly admirable book "*The Reason Why*" certain reflections follow from the account of the trial in the House of Lords of that repellent character the Earl of Cardigan for attempted murder. It will be remembered that the Earl had wounded one of his military critics in a duel after which he had been arrested by the miller who kept the mill on Wimbledon Common, the scene of the duel, who happened to be a constable. His trial was conducted for an acquittal by the then Attorney-General and Lord Chief Justice and the victim of the Earl's duelling pistol was not called. The defence succeeded on the grounds that each of the christian names of the victim, set out in the indictment, had not been proved to belong to the gentleman who was in fact shot. In delivering the verdict of the House only one duke felt dubious enough to give his decision as "Not guilty in law." The case seems to me to offer new possibilities for defenders and a series of most irritating points may now be taken on christian names based on the authority of *R.* v. *The Earl of Cardigan* which is, after all, a decision of the House of Lords.

Incidentally what an enjoyable and lively newspaper *The Times* of that period must have been. With no qualms about contempt of court it was crying for Lord Cardigan's head to be shaved and the noble Earl to be put to the treadmill for weeks before the trial. Nowadays no injustice or abuse ever ruffles the insipid waters of its leading articles. And I do not believe that that is because injustices and abuses no longer exist.

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It will be interesting to see the result of the flashing on television screens of the photograph of a man whom the police are "anxious to interview." If television is as popular and widely viewed as it is said to be the result should be a quicker than ever way of gaining information. Everyone will sooner or later be forced by their children into having a television set; the thought of endless parlour games interspersed with police photographs makes the prospect, perhaps, even more depressing.

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What do you do with people who shut their children up in cupboards without food over the weekend? Women with whom I have discussed a recent case have supported shutting the parents up in a cupboard and the idea is pleasing but dangerous as a penal theory. The child in question has been removed to the care of a local authority, but there are brothers and sisters still in the care of the parents. In any event a fine of £20 sounds inappropriate, but who benefits by sending the parents to prison? Is a bad mother better than a reasonable, but probably heartless, local authority? One can only feel sympathy for a bench of magistrates trying to answer these questions and gratitude to the N.S.P.C.C. who bring these matters to light. In the end, I suppose, it all comes down to longer and better education, not for the children but for the parents.

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The ways of fences are notably treacherous, none more so than those of the fence in a recent jewel robbery. Two simple thieves removed the jewels from the unlocked car of a wealthy but careless lady. They took them to the fence, who grudgingly gave them £15 for the lot. The next day the thieves, who could just about read, observed from the newspapers that Lady X's jewels, worth some thousands of pounds, had been stolen from her motor car. Round they went to the fence to protest at his price and demand a reassessment. "Oh!" said the fence "As soon as I saw they were Lady X's jewels I dumped them in the river. They were too hot to hold." Credulously the thieves hired boats and proceeded to start dredging operations on the river, at which pursuit they were soon noticed and quickly apprehended, after which they lost no time in admitting what they were looking for. The fence, meanwhile, I believe, passed on the jewels for a handsome profit.

"GEOFFREY LINCOLN."

Appeals to Quarter Sessions

By BRIGADIER A. C. C. WILLWAY, C.B., C.B.E., T.D., D.L.
Deputy Chairman, Surrey Quarter Sessions

From time to time criticisms are heard of the way in which quarter sessions deal with appeals from petty sessional courts and recently they seem to have been more frequent.

It is not to be expected that magistrates whose decisions have been reversed will always welcome the process; but the criticisms are not against appeals as such. Indeed, the case for a right of appeal from summary decisions is overwhelming and generally admitted. The present trouble arises from a feeling that the appeal tribunals—a court composed of members of the appeal committee in a county and the recorder in a borough—are capricious, and that they often interfere where there is no good reason for interference.

Appeal a rehearing

The procedure on an appeal to quarter sessions from a conviction or sentence of a court of summary jurisdiction is that of a rehearing. This means that the original prosecutor, who has become the respondent to the appeal, must for the second time shoulder the burden of proof. He must satisfy the appeal tribunal that the appellant is guilty or that the sentence imposed by the justices is right. In this respect an appeal to quarter sessions is unlike any other kind of appeal known to our criminal system. In all other cases the appellant must show that the decision appealed against was wrong.

The consequences are not always fully appreciated. Dealing first with an appeal against conviction, it must be admitted that there are advantages in the rehearing procedure. An appeal so conducted is the easiest to prepare and the easiest to present because the facts are related by the witnesses, who have already been through their paces in the court below. But it has big disadvantages. It requires the attendance on a second occasion of all the witnesses, and it is at least arguable whether some of them do not try and improve on their dress rehearsal before the magistrates when they face the footlights at quarter sessions. There are no depositions to check the consistency of the witnesses and the justices' clerk's notes of the evidence, even when available, are no substitute. So an appeal at quarter sessions often develops quite differently from the case before the justices and there can be no guarantee that the later version is nearer the truth than the former when the witnesses' memories were comparatively fresh.

Appeal against sentence

Whatever the objections to the rehearing procedure when the appeal is against conviction they are nothing to those when it is against sentence only. Consider a hypothetical, but in essentials typical, case. Three boys are charged before a juvenile court with pavilion-breaking and larceny. They plead not guilty and the magistrates hear the whole story, including the part played by each of the boys, from the lips of the witnesses. They hear also such explanations as the accused themselves have to offer. They find the charge proved, and after inquiry into the boys' antecedents and home circumstances, and very likely after a remand for fuller information, they decide that " A " is the ringleader, and because of his previous court appearances and general attitude they send him to an approved school, while they place one of the other boys on probation with an order for compensation, and simply fine the third. " A " appeals against the approved school order but " B " and " C " accept their fates. As guilt is admitted, no evidence is called, and all the appeal court hears of the prosecution's case is the studiedly moderate outline of the offence which distinguishes the conduct of the prosecution in this country. The police record will be briefly given and then the appellant's counsel addresses the court, making, no doubt, a moving plea for leniency, and probably calling witnesses to prove what an angel of light the appellant is in his over-indulgent home circle. The probation and other social workers' reports may do something to dull this rosy picture but in all the circumstances it will not be surprising if the appeal tribunal decides to give the youngster " one more chance." A probation order with no accompanying order for compensation, or even a conditional discharge, may be the result. Imagine the consternation of the local bench and the feelings of the parents of the co-defendants when they learn that the ringleader has " got away with it " !

Conclusion

The state of affairs disclosed is not satisfactory. It is no use blaming quarter sessions, though it may be that some appeal tribunals, in their anxiety to bring fresh minds to the rehearing of a case, are inclined to forget that a responsible bench has already reached a conclusion, and that it probably had reasons for so doing. The main trouble is the procedure which actually discourages the appeal tribunal from investigating what was in the mind of the lower court.

The Court of Criminal Appeal is a tribunal which really does review the proceedings in courts of assize and quarter sessions, and the reasons it has for reversing or modifying the decisions that come before it are clear and respected. But it would not be easy to substitute such a system for the present rehearing at quarter sessions. The Court of Criminal Appeal depends upon the shorthand note of the proceedings below, and it would be almost, if not quite, impossible to provide a similar service at all sittings of summary courts. This undoubtedly creates a difficulty.

But as most of the criticism of quarter sessions concerns appeals against sentences only, a modest reform might be made as a start. It would be possible to allow, or even to require, the lower court to submit to quarter sessions the reasons for their decisions, and any observations they might have generally on a case. This, presumably, would require legislation and proper safeguards to prevent the communication to the appeal tribunal of hearsay statements without the knowledge of the parties; but it should not be over-difficult to devise them. At the present time, when an appeal goes from a petty sessional bench to the High Court by way of case stated, the justices' reasons are set out in the case. Something a good deal less formal would be desirable on appeals to quarter sessions, but it would be a great gain and would assist the course of justice if the reasons for the lower court's decision could be taken into account before quarter sessions vary a sentence.

Practice and Procedure

Magistrates' Courts

What is the date of a summary conviction?

It was the commonly held opinion at one time that there could not be a summary conviction without a sentence. The cases of *R.* v. *Grant*, 26 Cr.App.R. 8; [1936] 2 All E.R. 1156, and *R.* v. *Sheridan* [1937] 1 K.B. 223; 26 Cr.App.R. 1, showed, however, that this was not so and the effect of these decisions has been embodied in certain sections of the Magistrates' Courts Act. But there is still scope for debate on what date should be regarded as the date of conviction; is it the date when the accused was found or pleaded guilty, or is it the date when he was sentenced?

It is obvious from the wording of many sections of the Act of 1952 that " convicted " as used in those sections means " having pleaded or been found guilty." But if this meaning is given to the term " conviction " wherever it occurs serious difficulties in practice arise and the new forms prescribed by the Magistrates' Courts Rules have to be amended. For instance, on all warrants issued to give effect to the sentence (including those to enforce unpaid fines) the date of the finding or admission of guilt will have to appear as an additional particular in cases where there was a remand for inquiries before the final adjudication. In the same circumstances an appropriate entry will have to be made in the register so that if a formal conviction is drawn up or if the conviction is proved by a certified extract from the register, the date of the conviction will be shown as the earlier one. The general practice of magistrates' courts, however, makes no provision for such an entry on the final adjudication, and nor do the Magistrates' Courts Rules. Yet without it there will be difficulty in ensuring that the necessary date is incorporated on process issued subsequently.

It cannot be suggested that these inconveniences will justify not making a change in the existing practice if, in fact, a strict compliance with the law demands the change. But it seems arguable that " conviction " does not in all contexts signify merely a finding or admission of guilt. In this connection it is noteworthy that the forms prescribed by the Magistrates'

Courts Rules assume, in most instances, that the date of conviction will be the date of sentence, and only in a few cases do they make provision for a difference in the two dates. The formal convictions and orders of conditional and absolute discharge all recite that the defendant "is this day convicted"; so does the probation order form. The commitment and distress-warrant forms in respect of outstanding fines do not provide for any other date but the date of sentence being given as the date of conviction. In fact, apart from warrants which may be issued either on the day of the final adjudication or at a later date, the only instances where the recital "was this day (or on the day of 19) convicted" occurs are on the "Commitment to Sessions; Borstal case" and the "Commitment to Sessions for Sentence." In those two instances there is, of course, no final adjudication by the summary court. This gives a clue to what, it is submitted, is the true interpretation of these ambiguities, namely, that "conviction" means a finding or admission of guilt only in those contexts where the final adjudication is not in question, but that where the term is used in connection with matters arising after sentence it includes also the judgment of the court; the date on which that is given becomes then the date of the conviction.

In the Magistrates' Courts Act itself there are sections where "conviction" must bear the second meaning suggested—notably section 69, where it deals with the fixing of imprisonment in default of paying a fine "on the occasion of the conviction," and section 126 (3) where it refers to an "amount ascertained by the conviction." These alternative meanings which may have to be given to "conviction" according to the context of its appearance, have been remarked on in judicial pronouncements on the law generally. For example, in Stroud's *Judicial Dictionary* it is stated "The word 'convicted,' or the 'conviction' of a person accused is equivocal," and the following dictum of Tindal C.J. is quoted: "In common parlance no doubt it is taken to mean the verdict at the time of trial; but in strict legal sense it is used to denote the judgment of the court." A more modern and equally learned judge, Avory J., said very much the same thing in *Oaten* v. *Auty* ([1919] 2 K.B. 278; 83 J.P. 173, at p. 177): "The word 'conviction' sometimes means merely the adjudication that a person has committed an offence; sometimes it means such an adjudication plus the judgment of the court upon it."

If effect is given as suggested to the alternative ways of interpreting the term " conviction " no alteration in existing forms or practice is necessary. On the other hand, should the court refer " conviction " back in all circumstances to the finding or admission of guilt there will be considerable confusion when a defendant's record is given unless the police adopt the same criterion and alter their present methods of recording convictions. The matter may be of considerable importance in some cases because certain statutes make certain facts admissible as evidence or provide for a heavier penalty if there has been a previous conviction of the accused within a specified period.[1] [A. E. Jones.]

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[1] For an expression of the opposite view of this matter, see 118 J.P.J. 36.

Case and Comment

[Reports of cases included here are prepared by C. J. Ellis, *Barrister-at-Law*, unless otherwise appears]

Assault—*Husband's assault on wife.* See R. *v.* Miller, p. 219.

Attempt—*Sale of meat above maximum price.* See Hope *v.* Brown, p. 211.

Aviation—*Drunkenness—imperilling safety of aircraft*

R. *v.* Silvertop [1] (Newcastle-on-Tyne Magistrates' Court: November 30, 1953).

The defendant was charged under articles 36 and 37 of the Air Navigation Order, 1949 (S.I. No. 349) with interfering with the pilot of an aircraft and being in a state of intoxication in an aircraft. The defendant hired the aircraft, a British aircraft, for a flight from Belfast to Newcastle. It was alleged that he had been drinking, that during the journey from Belfast to the English coast he gripped the pilot's wrist on several occasions so that the pilot feared for the safety of the aircraft and that, when the aircraft was over the airfield at Nutts Corner, Belfast, he exhorted the pilot to loop the loop. The charges were tried before a magistrates' court for one of the County Divisions of Northumberland, the county in which the defendant resided.

The court convicted the defendant and fined him £75 on each charge, and ordered him to pay the costs; three months' imprisonment on each charge to run consecutively would be imposed if payment were not made within fourteen days. [Reported by F. E. Beezley, Esq., *Barrister-at-Law.*]

Commentary. The Air Navigation Order, 1949, although made before the passing of the Civil Aviation Act, 1949, is kept alive by section 70 (2) of that Act. Special jurisdiction is conferred by section 62 (1): Any offence whatever committed on a British aircraft shall, for the purpose of conferring jurisdiction, be deemed to have been committed in any place where the offender may for the time being be.

The maximum penalty for an offence against articles 36 or 37 is a fine of £200 and/or six months' imprisonment: see article 65 (2).

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[1] For the prosecution: *F. E. Beezley* (of the Office of the Treasury Solicitor). For the defendant: T. H. C. Wardlaw, Solicitor.

Coroners—*New inquest—fresh evidence*

R. *v.* STANTON, *ex p.* MACARTHUR[2] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 29, 1954) (*The Times*, January 30, 1954).

A young boy was found hanging, with his feet nearly touching the ground. At the inquest the coroner found a verdict of suicide while the balance of the boy's mind was disturbed. The boy's father applied under section 6 of the Coroners Act, 1887, as amended, for an order in the nature of certiorari to quash the coroner's order and for an inquisition for a new inquest on the ground that a great deal of fresh evidence had been procured with regard to tricks which, the boy who was of an experimental turn of mind, had performed.

Held, allowing the applications and ordering another inquest to be held by a different coroner, that it was possible that if all the evidence had been before the coroner a different verdict might have been returned.

COMMENTARY. Section 6 of the 1887 Act permits the High Court to order a coroner to hold an inquest where the coroner refuses or neglects to do so, and in other circumstances. Section 19 of the Coroners (Amendment) Act, 1926, was passed to remove doubts as to the extent of section 6 and specifically refers to the discovery of new facts or evidence.

Dogs—*Worrying of livestock—whether unfenced land agricultural land*

LEE *v.* DALTON AND STEVENS[3] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 27, 1954).

The respondents were the respective owners of an Alsatian bitch and a Labrador dog. Informations were preferred against them severally for that each was the owner of a dog found worrying poultry on agricultural land, contrary to section 1 (1) of the Dogs (Protection of Livestock) Act, 1953. The land in question on which about fifty chickens, three geese and some bantams were kept, adjoined a bungalow. At night the poultry were kept in fenced chicken runs, but during the day were allowed to wander over the rest of the land which was not fenced in and was not cultivated. The justices were of the opinion that the land on which the worrying took place was not agricultural land as it was not fenced in and was not used for agricultural purposes, and they dismissed the informations. On appeal by the prosecutor:—

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[2] For the applicant: *Geoffrey Lane* (instructed by Routh, Stacey & Castle, for Stapleton & Son, Stamford). For the coroner: *Rodger Winn* (instructed by Hale, Ringrose & Morrow).

[3] For the appellant: *Malcolm Morris* (instructed by Sharpe, Pritchard & Co., for R. P. Tunstall, County Hall, Maidstone).

Held, allowing the appeal, that the land was clearly agricultural land within the Act, and the offences, therefore, were proved. Parliament had intended to protect small poultry keepers as well as big poultry farmers, and the case was just the kind of case that the Act was meant to cover. People who kept marauding dogs must see that they did no harm and should remember that they might also be liable under the Dogs Act, 1906, as amended by the Dogs (Amendment) Act, 1928.

COMMENTARY. Section 3 (1) of the 1953 Act defines "agricultural land" as "land used . . . for the purpose of poultry farming . . ." and nowhere requires that the land should be fenced in order to be within the definition.

Evidence — *Complaint — indecent assault — first reasonable opportunity*

R. *v.* STRACHAN [4] (County of London Quarter Sessions: Vernon Gattie, Esq.: January 27, 1954).

The accused was indicted for indecent assaults upon an 11 year old boy and his 7 year old brother. During the course of the trial an objection was taken by the defence as to the admissibility of a complaint made by the boy in the following circumstances. The accused was approached, as he was leaving an alleyway in the company of the two boys, by two men, one of whom asked him what he had been doing with the boys. The accused replied that he had gone down the alleyway to relieve himself and the boys had followed him, and one of the boys said: "It's all right, mister, he has not done anything wrong," after which the accused left and one of the boys immediately made a complaint. The boy in evidence said that he was scared and so did not complain until the accused had left.

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[4] For the prosecution: *S. H. Noakes* (instructed by the Metropolitan Police). For the defendant: *Gerald Howard Q.C.*, *Gilbert Rountree* (instructed by Kingsford, Dorman & Co.).

For the accused it was contended that a complaint should only be admitted if it is made at the first reasonable opportunity having regard to all the circumstances, and that in this instance, there being two men present and the specific question inviting a complaint being put, that that was the reasonable opportunity.

The objection was not upheld because as the complaint had followed immediately after the accused had left, a very short space of time having elapsed, there had been no real opportunity for the boy to concoct the story, but that the circumstances detracted from the weight that should be placed on it. [Reported by Peter G. Mason, Esq., *Barrister-at-Law.*]

COMMENTARY. *See* Archbold, 33rd ed., 394.

Evidence—*False pretences—evidence of previous acquittal on a similar charge*

R. *v.* DEIGHTON AND THORNTON [5] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: December 14, 1953).

D. and T. were charged with obtaining money by false pretences. The evidence showed that they offered for sale to a man a ring which they said was a diamond ring, but which turned out to contain a zircon. The accused had obtained £10 as a deposit from the prospective purchaser, leaving the ring with him so that he might have it valued. Evidence was given that three years previously D. had in fact sold three rings as diamond rings and they had turned out to contain zircons. D. had been prosecuted for false pretences but acquitted. In the present case both D. and T. were convicted of the charge. They appealed on the ground that the evidence relating to the former charge against D. ought not to have been admitted.

Held, dismissing the appeal, that the evidence was clearly admissible to show that D. had knowledge that zircons could be mistaken for diamonds and could be passed off as such by a dishonest person and also to some extent to show that he was knowingly or falsely representing that the ring was a diamond ring when it was a zircon or recklessly doing it not caring whether it was true or false.

COMMENTARY. See Archbold, 33rd ed., 375, 382.

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[5] For the appellants: *P. A. Marrinan* (instructed by Probyn, Dighton & Parkhouse). For the Crown: *Alastair Morton* (instructed by the Metropolitan Police).

False Pretences—*Obtaining credit—credit obtained for someone other than the accused*

R. *v.* HAMER[6] (Leeds Assizes: Stable J.: December 3, 1953).

The accused was indicted on twelve counts; six alleging that with intent to defraud he had caused goods to be delivered to one limited liability company and other unincorporated firms with which he was concerned, by false pretences contrary to section 32 (1) of the Larceny Act, 1916; and six alternative counts alleging that he had obtained credit by fraud other than false pretences, contrary to section 13 (1) of the Debtors Act, 1869.

The businesses concerned were the Gafa Wholesale Supply Co. and Sinus Wholesale Co. (both of which were registered under the Registration of Business Names Act, 1916, by persons other than the accused but which, the prosecution alleged, were in fact businesses conducted solely by him) and, in one count, the Terrene Timber & General Trading Co., Ltd. (of which the accused was a director). The accused was admitted to be the proprietor of the business known as the Nip-In Café.

On a submission for the defendant at the close of the case for the prosecution, Stable J. *held*, (1) in the six counts alleging obtaining by false pretences the false pretence alleged was that the accused was financially sound and was engaged in conducting a genuine and bona fide business. This did not correspond with the facts proved in evidence that the false pretences alleged were in fact in relation to a company or firm; there was, therefore, no evidence to go to the jury on those counts. Leave to amend the indictment to correspond with the facts proved by the prosecution was refused.

(2) In four of the counts relating to obtaining credit by fraud the accused had obtained the credit not for himself but for divers businesses known by other names, and credit had not in fact been given to the accused himself. Therefore, following *R.* v. *Bryant* (1899) 63 J.P. 376 and applying *R.* v. *Steel* (1910) 5 Cr.App.R. 289, there was no case to go to the jury on those four counts.

The accused was convicted on the remaining two counts of obtaining credit by fraud other than false pretences in respect of the business known as the Nip-In Café. [Reported by R. H. Hutchinson, Esq., *Barrister-at-Law.*]

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[6] For the prosecution: *Sir Godfrey Russell Vick Q.C.*, *F. C. Denny* (instructed by the Director of Public Prosecutions). For the defendant: *E. John Parris*, *R. H. Hutchinson* (instructed by Messrs. T. H. Hinchcliffe & Son, Manchester).

COMMENTARY. *R.* v. *Bryant* and *R.* v. *Steel* decide that for the accused to be convicted on a charge of obtaining credit he must obtain it for himself.

See Archbold, 33rd ed., 1349.

False Pretences — *Obtaining possession — breach of term of contract*

GARDINER *v.* FUDGE[7] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 19, 1954).

G. called on B. and asked to buy B.'s caravan. He told B. that he had just sold his farm in Ireland and was waiting for the money. B. agreed to sell the caravan to G. for £750. A few days later G. returned to see B. and said that it would be a few weeks before he received the money and that he wanted to live in the caravan. B. then agreed to let G. have the caravan on hire on the terms that he paid £20 deposit and £10 a week, such payments to be credited against the purchase price on completion of the sale, and that he kept the caravan at Blashford in Hampshire. On February 27, 1953, G. paid the £20 and took possession of the caravan. G. made further payments amounting to £40. On June 17, 1953, the caravan was discovered in Scotland with G. and his family living in it. G. was charged with obtaining the caravan by false pretences contrary to section 32 of the Larceny Act, 1916, which provides that: "Every person who by any false pretence—(1) with intent to defraud, obtains from any other person any chattel, . . . shall be guilty of a misdemeanour." The magistrates being of the opinion that G. had obtained the caravan by falsely pretending that he had sold his farm in Ireland found him guilty of the offence. G. appealed.

Held, allowing the appeal, that "obtains" in the statute meant obtaining the property in the goods and did not deal with a case where all that was obtained was possession. Had G. sold the caravan he would have been guilty of larceny. All that G. was guilty of was a breach of the terms of his contract and that was not a criminal offence.

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[7] For the appellant: *Norman King* (instructed by Lovell, Son & Pitfield, for H. W. Dibben & Co., Wimborne Minster). For the respondent: *Raymond Stock* (instructed by C. P. Brutton, O.B.E., County Hall, Dorchester).

COMMENTARY. See *R.* v. *Ball* [1951] 2 K.B. 109; 35 Cr.App.R. 24; *R.* v. *Pople* [1951] 1 K.B. 53; 34 Cr.App.R. 168; *R.* v. *Lurie* [1951] 2 All E.R. 704; Archbold, 33rd ed., 712 *et seq.*

Food and Drugs—*Meat—sale above maximum price—attempt*

HOPE *v.* BROWN[8] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 21, 1954) ([1954] 1 W.L.R. 250; [1954] 1 All E.R. 330).

The manager of a butcher's shop prepared twenty-one packages of meat for delivery to customers and placed them in a refrigerator, with a ticket on each package specifying the customer's name, the weight of the meat and the price which was in accordance with the Meat (Prices) (Great Britain) Order, 1952. Two enforcement inspectors visited the shop and found the meat in the refrigerator. They also found in a drawer a set of tickets, each of which related to one of the packages, with a price which was in excess of the permitted price. The manager said that the delivery girl was instructed to change the tickets when the orders went out and bring the genuine tickets back to the shop. The manager was charged with attempting to sell meat at a price in excess of that permitted by the Order. At the end of the prosecution's case it was submitted that the facts were not sufficient in law to constitute an attempt to commit the offence. The magistrates accepted the contention and dismissed the informations. On appeal:—

Held, dismissing the appeal, that the appellant had merely formed the intention to commit an offence and his acts were only those preparatory to the commission of that offence. The preparation of the false tickets and putting them in the drawer were acts too remote from the actual transaction to constitute the attempt, because there might be a sudden change of heart or an intervention by the manager which would have prevented any attempt being made to sell the meat to the customers.

COMMENTARY. Article 3 of the Order: "No person shall sell or buy any meat at a price exceeding the maximum price applicable . . ." Lord Goddard C.J. considered that the offence would not have been committed until, at any rate, the meat had got the false ticket on it and it had been sold with that false ticket on it to the customer. For a discussion of the rule that the act of attempt must be sufficiently proximate to the crime intended, see Glanville Williams, *Criminal Law*, The General Part, §§ 144–7.

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[8] For the appellant: *J. P. Ashworth* (instructed by Treasury Solicitor). For the respondent: *John Newey* (instructed by Gregory, Rowcliffe & Co. for Frank Platt & T. W. Fishwick, Wigan).

Food and Drugs—*Sale of food unfit for human consumption—proceedings against manufacturers*

Fisher *v.* Barnett & Pomeroy (Bakers)[9] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 20, 1954) ([1954] 1 W.L.R. 351; [1954] 1 All E.R. 249).

B. & P. Co., bakers, sold a bread roll to L. Co. L. Co. then sold the roll to E. Co. who, in preparing it for sale in their canteen, discovered the end of a smoked cigarette inside the roll. B. & P. Co. were charged under section 83 (3) of the Food and Drugs Act, 1938, with selling a roll unfit for human consumption contrary to section 9, the prosecutor being satisfied that L. Co. could establish a defence under section 83 (1). Before the defendant company were called on to plead to the charge, it was submitted on their behalf that the prosecution should elect whether they were proceeding under section 9 (1) (*a*) or section 9 (2). The prosecutor submitted that the proceedings were under section 83 (3), and that section 9 (1) (*a*) was only relied upon as creating the offence. The magistrate found the facts in the information proved, but dismissed the information on the ground that the prosecution having elected to proceed under section 9 (1) (*a*), the proceedings were misconceived as they should have been brought under section 9 (2). On appeal:—

Held, allowing the appeal and remitting the case to the magistrate, that the prosecutor was under no duty to elect whether he would proceed under section 9 (1) (*a*) or section 9 (2) as the proceedings were brought under section 83 (3); section 9 (2) merely gave a defence to a person who could prove that goods were in a good condition when sold by him and that had no application to the present case.

Commentary. Section 9 (1) (*a*) creates the offence of selling, offering or exposing for sale, etc., food unfit for human consumption. Subsection (2) provides that if A is convicted of an offence under subsection (1) (*a*) then B, the person who supplied the food to A, may also be prosecuted and it is necessary to show only that B supplied the food to A in order to convict him provided he does not prove that the food was good when he supplied it to A.

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[9] For the appellant: *Paul Wrightson* (instructed by F. S. Chapple). For the respondents: *Brian J. P. Galpin* (instructed by Lethbridges).

Section 83 (3), generally called the third party section, entitles the prosecutor if satisfied that some person other than the actual seller is in fact responsible for the condition of the goods, to proceed against that person instead of the seller.

Friendly Societies—*Misappropriation—deficiency in stock*

SARGEANT *v.* LARGE[10] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Byrne JJ.: February 2, 1954) (*The Times*, February 3, 1954).

L., formerly a stewardess at a club registered under the Industrial and Provident Societies Act, 1893, was charged under section 64 of that Act with wrongfully withholding or misapplying beer, wine and spirits and cash to the value of £107 2s. 7d., the property of the club. The justices found that L. was in charge of the stocks of beer, wine and spirits and cash and possessed the only key to the stores where the stock was kept. From March 27 to May 1, 1953, there was a deficiency of £107 2s. 7d. either of stock or cash proceeds. The amount for the consumption of spirits for that period was unusually high. On May 3, a new steward found in the cellar twelve bottles of water coloured to represent whisky. The justices dismissed the informations at the end of the prosecution's case. On appeal:—

Held, allowing the appeal and remitting the case to the justices, that a very serious deficiency was found in the stock-taking, which L. admitted was accurate, and there was a prima facie case to be answered.

Highways—*Mud—failure to remove mud from vehicle being brought on to the highway*

R. *v.* MAINPRIZE[11] (Bridlington Magistrates' Court: January 6, 1954).

A police officer on duty in a small village saw on the road a considerable quantity of wet mud which appeared to have been left by the wheels of a vehicle. The tracks led to a motor-lorry driven by the accused who was charged under the

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[10] For the appellant: *M. D. Van Oss* (instructed by Wood, McLellan & Williams, Chatham). For the respondent: *Michael Chavasse* (instructed by Booth, Hearn & Stratton, Chatham).

[11] The parties were not represented.

County of York, East Riding (Removal of Mud, etc., from Wheels of Vehicles) By-law, 1952, clause 2 of which provides: "The person in charge of a vehicle shall not bring the vehicle or permit it to be brought upon a highway unless there has been removed from the wheels thereof as completely as is reasonably practicable all mud, clay, lime and similar material or any fertilizer or manure which is likely, if not removed, to cause obstruction or danger to persons using the highway or injury to the surface of the highway."

The accused was convicted and fined 10s. [Reported by E. A. Moorhouse, Solicitor, Clerk to the Justices.]

COMMENTARY. Clause 2 is a reproduction of the model by-law on the subject issued by the Home Office. The East Riding By-law does not contain the first clause in the Home Office model which provides: A person in charge of a vehicle which is upon a highway shall, when to his knowledge any mud, clay, lime or similar material has fallen on the highway from the vehicle and is likely if not removed therefrom to cause obstruction or danger to persons using the highway or injury to the surface of the highway, remove or cause to be removed all such fallen material from the highway as completely as is reasonably practicable.

Indecent assault—*Complaint—first reasonable opportunity.*
See R. *v.* STRACHAN, p. 207.

Magistrates—*Error in record—power to order amendment*

R. *v.* STEVENSON, *ex p.* SPECTERS[12] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Byrne JJ.: February 2, 1954) (*The Times*, February 3, 1954).

In proceedings by the Ministry of Food A and B had been found guilty on sixteen out of nineteen joint summonses. The magistrate imposed a fine of £25 for each joint summons (a total of £400) and ordered the defendants to pay £150 costs, but the sentences had been recorded as £25 on each summons against each defendant, which amounted to £400 in fines against each (a total of £800). The magistrate refused to amend the register of convictions. A and B applied for an order of mandamus requiring the magistrate to correct the order in the register.

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[12] For the applicants: *David Weitzman Q.C.*, *Bernard Finlay* (instructed by Mendes da Costa, Greenwood & Co.). For the respondent: *R. J. Parker* (instructed by the Treasury Solicitor).

Held, granting an order of mandamus, that the magistrate could have altered the register under the slip rule, under which every court could alter an entry made in error, and he must pay the costs of the application.

COMMENTARY. The slip rule affecting the High Court is to be found in R.S.C., Ord. 28. There does not appear to be any similar provision in the Magistrates' Courts Act, 1952, or the rules, and presumably this case is authority for saying that any court has inherent jurisdiction to correct manifest errors in recording its decision.

Magistrates—*Exceeding jurisdiction—penal order as to costs*

R. *v.* HIGHGATE JUSTICES, *ex p.* PETROU[13] (Q.B., Divisional Court : Lord Goddard C.J., Byrne and Parker JJ. : January 27, 1954) ([1954] 1 All E.R. 406).

P. owned premises which she let to R., where R. carried on a club of which P. was secretary. The police took out ten summonses against R. for offences in connection with the club, and one against P. for an order that the club should be struck off the register. The justices fined R. £10 and 20 gns. costs, although they were told that the total police costs were 21 gns., and they ordered P. to pay £100 costs. P. applied for an order of certiorari to quash the justices' order on the ground that they had exceeded their jurisdiction.

Held, granting an order of certiorari, that the justices were not imposing costs, but a penalty in the guise of costs, on P., who had not been convicted of any offence. The justices should pay the costs of the application and the documents in the case were directed to be sent to the Lord Chancellor.

COMMENTARY. As to the magistrates' powers to order the payment of costs, see Stone, 85th ed., 223.

Merchandise Marks — *False trade description — goods underweight—defence*

GRAY *v.* SOVEREIGN CONFECTIONERY CO.[14] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 27, 1954).

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[13] For the applicant: *Norman King* (instructed by A. L. Philips & Co.). For the respondents: *Alastair Morton* (instructed by the Middlesex County Council).

[14] For the prosecutor: *Harold J. Brown* (instructed by Field, Roscoe & Co., for Kenneth Goodacre, Leicester). For the defendants: *Roy Wilson Q.C.* and *Bernard Caulfield* (instructed by Willett, Bullough & Boardman, Warrington).

The defendants, who were sweet manufacturers, sold to X company a number of boxes of toffees each labelled "7 lbs. net weight." In fact a number of them were underweight. On a charge under the Merchandise Marks Act, 1887, s. 2 (2), of unlawfully selling the boxes to which a false trade description had been applied, the justices, finding that the defendants, who employed a number of girls to pack the boxes, had taken all reasonable precautions against committing an offence and had given to the prosecutor all information in their power, dismissed the charge. The prosecutor appealed.

Held, allowing the appeal, that the justices had confused matters of mitigation with matters of defence. A master being vicariously liable for the acts of his servant, the defences available to a trader under section 2 (2) were not open to him unless the servants also were in a position to rely on them, which in the present case they were not. Moreover, the purpose of the Act was to protect persons who bought goods from manufacturers and the defences provided by the Act were not open to the manufacturers themselves.

COMMENTARY. By s. 2 (2) it is an offence for a person to sell goods with a false trade description unless he proves (a) that he took all reasonable precautions against committing an offence and had no reason to suspect the genuineness of the trade mark and (b) that on demand by the prosecution he gave all the information in his power with respect to the persons from whom he obtained the goods.

See Stone, 85th ed., 1561 *et seq.*

Murder—*Intent—accused feeble-minded—direction to jury*

R. *v.* LENCHITSKY[15] (Court of Criminal Appeal: Lord Goddard C.J., Byrne and Parker JJ.: January 11, 1954) (*The Times*, January 12, 1954).

L. met a little girl in the street. He took her to his house where he started to undress her. When she started to cry he put his hand over her mouth to stop her and then put part of her clothing round her mouth. L. then put the child in a box. It was not clear whether she was then alive or dead. L. was charged with the murder of the little girl. It appeared that L. was feeble-minded; that he had been in an institution and that he had the intelligence of a child of nine. Havers J. directed the jury that if the prosecution had satisfied them, that at the time that the acts were done, L. had the intention to kill or do grievous bodily harm, then he was guilty of murder; but that if they were satisfied that, owing to his feeble-mindedness, L. was incapable of forming the intention to do grievous bodily harm, they must find him guilty of manslaughter. Havers J. also directed the jury on the question of insanity. The jury returned a verdict of guilty of murder and L. was sentenced to death. The main ground of appeal was that, as L. had rebutted the normal presumption that the consequences of his acts were intended, the judge had not directed the jury properly on the question of intent and as to the relevance of the medical evidence.

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[15] For the appellant: *Anthony Marlowe Q.C.* and *E. G. P. St. George* (instructed by Thomas V. Edwards & Co.). For the Crown: *Christmas Humphreys and Maxwell Turner* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeal, that the judge's direction was absolutely accurate.

COMMENTARY. See *R.* v. *Rymell* [1954] Crim.L.R. 60, Archbold, 33rd ed., 16, as to tests of insanity, 945 as to killing with intention.

Murder—*Intent—division of transaction*

THABO MELI *v.* R.[16] (Judicial Committee of the Privy Council: Lords Goddard C.J., Reid and Mr. L. M. D. de Silva: January 13, 1954) ([1954] 1 W.L.R. 228).

T. M. and three others took L. to a hut where they struck him on the head with an instrument. Believing him to be dead, they took L. outside and rolled him over a cliff to make his death look accidental. Medical evidence showed that L. had died from exposure and not from the head wounds. T. M. and the three others were convicted of murder before the High Court of Basutoland. They appealed on the ground that although their acts in the hut were accompanied by *mens rea*, those acts did not cause L.'s death; the act which did cause L.'s death was not accompanied by *mens rea* and therefore they were not guilty of any crime except perhaps culpable homicide.

Held, dismissing the appeal, that it was impossible to divide up one transaction in that way, there was no doubt that the appellants had set out to do all the acts in order to achieve their plan. There was no relevant difference in the present case between the law of South Africa and that of England, and by both laws there could be no separation, as contended for by the appellants, to reduce the crime from murder to a lesser crime, merely because the appellants were under some misapprehension for a time during the completion of their criminal plot.

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[16] For the appellants: *S. N. Bernstein, A. Hughes-Chamberlain* (instructed by Hy. S. L. Polak & Co.). For the Crown: *Frank Gahan Q.C., J. G. Le Quesne* (instructed by Burchells).

COMMENTARY. The problem raised in this case was discussed in Glanville Williams, *Criminal Law*: The General Part (1953), § 43, contrasting the American case *Jackson* v. *Commonwealth* (1896) 100 Ky. 239 (which supports the view of the Privy Council) with the Indian case *Khandu* (1890) I.L.R. 15 Bom. 194. See also Archbold, 33rd ed., 928 *et seq.*

Public Health—*Rag and bone dealers—gift of "article" to person under 14 years of age*

DALY *v.* CANNON [17] (Q.B.: Lord Goddard C.J., Byrne and Parker JJ.: January 20, 1954) ([1954] 1 W.L.R. 261; [1954] 1 All E.R. 315).

An information was laid against a rag and bone man, who, while engaged in collecting rags, gave a live goldfish to a boy under fourteen years of age, which it was alleged was contrary to section 154 of the Public Health Act, 1936. The magistrates dismissed the information. On appeal:—

Held, dismissing the appeal, that a goldfish was not an article within the meaning of section 154 and therefore no offence had been committed.

COMMENTARY. Public Health Act, 1936, s. 154 (1): "No person who collects or deals in rags . . . shall— . . . (*b*) while engaged in collecting any such articles . . . sell or deliver, whether gratuitously or not, any article of food or drink to any person, or any article whatsoever to a person under the age of fourteen years."

The court approved a similar decision by Mr. Eddy, stipendiary magistrate, in *West Ham Corporation* v. *Markham* (1953) 117 J.P.J. 24.

Quarter Sessions—*Appeal to—irregularity at summary trial—quashing of conviction*

BOWMAN *v.* LEWTAS [18] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 26, 1954).

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[17] For the appellant: *A. E. Holdsworth* (instructed by K. F. B. Nicholls, Town Clerk, Ilford. The respondent was not represented and did not appear.

[18] For the appellant: *H. E. Hooson* (instructed by Hyman Isaacs, Lewis & Mills, for Philip Binnes & Albert Cohen, Liverpool). For the respondent: *Philip Owen* (instructed by Field, Roscoe & Co., for Jeans, Arnott & Bottomley, Warrington).

B. was charged before the magistrates with stealing a road safety lamp. The magistrates convicted B. and fined him £1. B. appealed to the appeals committee of quarter sessions where he took the preliminary point that the proceedings before the magistrates were irregular as he had been denied the right to elect whether he wished to be tried summarily or by jury at quarter sessions. The appeals committee found that B. had not been given a right of election, but they did not know whether they had power to quash the conviction, in view of the respondent's contention that as the magistrates had no power to try the case summarily without B.'s consent, they were therefore not functioning as a magistrates' court within section 124 of the Magistrates' Courts Act, 1952, and therefore no appeal lay to quarter sessions. A special case was stated for the opinion of the High Court by the consent of the parties under section 11 of the Quarter Sessions Act, 1849.

Held, that as larceny was an indictable offence which could be tried only by a jury unless the accused elected to be tried summarily, the conviction could not stand. There was nothing to stop quarter sessions quashing the conviction although the more usual course in such a case was for the accused to come direct to the Divisional Court for an order of certiorari to quash the conviction. The case would be sent back to quarter sessions with an order that they must quash the conviction.

COMMENTARY. See Magistrates' Court Act, 1952, ss. 83 (right of appeal to quarter sessions) and 124 (meaning of "magistrates' court"); Summary Jurisdiction Act, 1879, s. 40 (powers of quarter sessions on an appeal); Stone, 85th ed., 96, 125, 143.

Rape—*Husband and wife—husband's assault on wife after commencement of divorce proceedings*

R. *v.* MILLER[19] (Winchester Assizes: Lynskey J.: December 10, 1953) ([1954] 2 W.L.R. 138).

M.'s wife committed an act of adultery as a result of which a child was born. M. condoned that act and took his wife back. A month later M.'s wife left him because she alleged that he had said that he would be harsh to the child. In

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[19] For the prosecution: *N. Skelhorn* (instructed by Bernard Chill & Partners, Southampton). For the accused: *E. S. Fay* (instructed by Geoffrey Wells & Woodford, Southampton).

January, 1953, the wife issued a petition for divorce alleging that M. had committed adultery. The petition came on for hearing in May when the husband was away but he sent a letter saying that he wished to be heard and the case was stood out generally. M. subsequently met his wife and had intercourse with her against her will. M. was charged with rape or alternatively with assault causing grievous bodily harm. Before arraignment M.'s counsel moved to quash the indictment on the ground that the depositions showed that the woman concerned was M.'s wife and that in law a man could not rape his own wife, and that regarding the second count it was no assault for a man to have intercourse with his wife and that the depositions disclosed no actual bodily harm. Lynskey J. ruled that the application was premature. M. pleaded not guilty and at the end of the prosecution's case, M.'s counsel submitted that there was no case to answer.

Lynskey J. directed the jury that (1) regarding the charge of rape, a woman by the contract of marriage gave her consent to acts of intercourse and as M.'s marriage had not been terminated and there was no evidence to show that his wife's implied consent to marital intercourse had been revoked the law implied consent and M. could not be guilty of rape;

(2) regarding the assault, although M. had a right to marital intercourse he was not entitled to use force or violence in the exercise of that right. There was evidence that M. threw his wife to the ground and that afterwards she was in a hysterical and nervous state. "If a person is caused hurt or injury resulting, not in any physical injury, but in an injury to her state of mind for the time being that is within the definition of actual bodily harm."

The jury returned a verdict of not guilty of rape but guilty of common assault.

Commentary. A separation order or a judicial separation operates as a withdrawal by the wife of her implied consent to intercourse, so that whilst such an order operates a husband who forces intercourse upon his wife without her consent will be guilty of rape: *R.* v. *Clarke*, 33 Cr.App.R. 216; [1949] 2 All E.R. 448. Lynskey J. was prepared to hold that a separation agreement containing a non-molestation clause would have the same effect.

See Archbold, 33rd ed., 1091; and 992 as to actual bodily harm.

Sentence—*Company director—order not to act as a director*

R. *v.* COHEN AND SMITH [20] (Central Criminal Court: The Common Serjeant, Sir Hugh Beazley: December 16, 1953).

The two accused, directors of Alexandra Keep, Ltd., were found guilty of the offence of fraudulent trading contrary to section 332 (3) of the Companies Act, 1948. Cohen was also found guilty of certain false pretences. Cohen was sent to prison for three years and Smith was fined £500. In addition the court made an order that Cohen, who was an undischarged bankrupt, should not without the leave of the court be a director of or in any way whether directly or indirectly be concerned or take part in the management of a company for the period of five years immediately following upon the date of his discharge from bankruptcy. The court made a similar order in the case of Smith for a period of five years from the date of conviction. These orders were made under section 188 of the Companies Act, 1948. [Reported by Philip Syrett, Esq., *Barrister-at-Law.*]

COMMENTARY. Section 188 empowers the court to make an order when (a) a person is convicted on indictment of any offence in connection with the promotion, formation, or management of a company or where (b) in the course of winding up a company it appears that a person (i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 332 of the Companies Act, 1948; or (ii) has otherwise been guilty, while an officer of the company, of any fraud in relation to the company or of any breach of his duty to the company.

These orders have been made regularly at the Central Criminal Court in the last few years in cases of persons convicted under section 332 although there is no reported instance of such an order being made, as apparently may be done, in the case of a person liable but not convicted under that section and indeed it is far from clear in what circumstances such an order could properly be made by a criminal as opposed to a civil court.

The interesting feature in this case is the suspension of the order in relation to Cohen until such time as he is discharged from bankruptcy. It is obvious that the operation of such an order while he was in any event under the disabilities of bankruptcy would be nugatory and the suspension would seem therefore to be in accordance with common sense. Although, so far as is known, this is the first example of such an order it would seem to be within the powers of the court as the section ends with the words "for such period not exceeding five years as may be specified in the order." There is nothing, therefore, in the section to compel the court to make the order to run from the date of conviction.

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[20] For the prosecution: *Neville Faulks, Philip Syrett* (instructed by The Solicitor, Board of Trade). For the defendant Cohen: *Frank Cassels* (instructed by Simon, Haynes, Barlas & Cassels). For the defendant Smith: *John Bussè Q.C., James Burge* (instructed by Cole & Matthews).

Sentence—*Imprisonment—alteration from preventive detention—offence unconnected with previous dishonesty*

R. *v.* DAVIES [21] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Byrne JJ.: February 1, 1954) (*The Times*, February 2, 1954).

D. was sentenced to seven years' preventive detention for arson. He had a bad record for dishonesty but after his last conviction he had obtained employment and was working. As a result of his wife leaving him after a disagreement, he got drunk, and lit a bonfire in his own house. The fire might have spread to the next house, where people were living, had the fire brigade not been able to get it under control. As the crime of arson had nothing to do with his previous dishonesty the court reduced his sentence to one of eighteen months' imprisonment.

Sentence—*Imprisonment—plea of guilty to stealing a motor-vehicle—alteration of charge and sentence*

R. *v.* LEBOURN [22] (Court of Criminal Appeal: Lord Goddard C.J., Sellers and Barry JJ.: December 1, 1953).

L. pleaded guilty to a charge of stealing a motor-vehicle and was sentenced to two years' imprisonment; he appealed against his sentence. Lord Goddard C.J. asked L. whether he realised the difference between stealing and taking away a motor-car; he said that he thought he was charged with taking away the car.

Having regard to the facts the court thought that the charge should have been for taking and driving away a motor-vehicle for which offence a sentence of two years' imprisonment could not have been imposed. Despite L.'s unfortunate record the court did not think that he should have a sentence for stealing but for taking and driving away and they therefore reduced his sentence to twelve months' imprisonment.

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[21] The applicant did not appear and was not represented.

[22] The applicant was not represented.

Sentence—*Imprisonment—youth of* 16 *guilty of violence*

R. *v.* HARRISON [23] (Stoke-on-Trent City Quarter Sessions: Erich Sachs, Q.C., Recorder: January 5, 1954).

H., aged 16, pleaded guilty to five offences of breaking in and larceny and asked for 137 similar cases to be taken into consideration. He also pleaded guilty to assaulting a young married woman with intent to ravish her, maliciously wounding another woman and maliciously wounding a man, all in the course of the above five offences.

In view of the crimes of violence and their brutality the Recorder sentenced H. to six years' imprisonment. [Reported by M. Holdsworth, Esq., *Barrister-at-Law.*]

Acts and Orders

Coroners

CORONERS' RECORDS (FEES FOR COPIES) RULES, 1954 (S.I. No. 14): operative February 1, 1954.

The fees payable to coroners or other persons for furnishing copies of inquisitions, depositions or other documents in their custody relating to an inquest are increased by one-third except for the lowest fee, which remains the same at 1½d. The 1929 Rules (S.R. & O., No. 1022) are revoked.

Courts-Martial Appeal Court

COURTS-MARTIAL APPEAL COURT (FEES AND EXPENSES) REGULATIONS, 1954 (S.I. No. 21): operative January 25, 1954.

The registrar of the court is to determine the fees payable to the counsel and solicitor assigned to an appellant by the court. For counsel the fee is to be not less than £5 10s. and not more than £25 19s. The solicitor is to receive not less than £5 5s. and not more than £16 16s., in addition he shall receive, subject to taxation, travelling and out-of-pocket expenses incurred by himself or his clerk.

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[23] For the prosecution: *M. Holdsworth* (instructed by W. C. Scott, Prosecuting Solicitor, Stoke-on-Trent, and Eric B. Whitehead, Newcastle-under-Lyme). For the defendant: *W. R. Handforth* (instructed by Hawley & Phœnix, Stoke-on-Trent).

Customs and Excise

IMPORT OF GOODS (CONTROL) ORDER, 1954 (S.I. No. 23): operative January 21, 1954.

The 1940 Order (S.R. & O., No. 873) as amended is revoked and superseded; the principal change is that where false information has been given for the purpose of obtaining an import licence the licence is void from the time when it was granted.

For penalties for infringement see section 3 of the Import, Export and Customs Powers (Defence) Act, 1939.

Food and Drugs

SHIPS' STORES ORDER, 1953 (S.I. No. 1897): operative January 1, 1954.

Ships' stores dealers need no longer be licensed and the number of foods which are subject to restriction when supplied for use on ships is reduced. The No. 2 Order, 1950 (S.I. No. 1462) as amended is revoked.

For penalties for infringement see Defence (General) Regulations, 1939, reg. 92.

FOOD (LICENSING OF ESTABLISHMENTS) (AMENDMENT) ORDER, 1954 (S.I. No. 58): operative January 24, 1954.

Catering licences need not be held by establishments using no rationed food in the meals they supply and fried fish shops if they use no rationed food other than cooking fat.

FOOD RATIONING (GENERAL PROVISIONS) (AMENDMENT) ORDER, 1954 (S.I. No. 74): operative January 24, 1954.

Catering licensees need no longer cancel coupons in the ration documents of residents nor need they keep records of meals served; but the documents of residents staying for a continuous period of twenty-eight days must be delivered to the Food Office unless the resident declares his intention to cease residence within a further fourteen days.

London

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 1 (S.I. No. 17): operative January 27, 1954; No. 2 (S.I. No. 76): operative February 17, 1954.

Prescribed routes are detailed for Furnival, Norwich and Cursitor Streets and Bream's Buildings and for Sibthorp Road in Mitcham. Fines not exceeding £5 for a first offence and £10 for a second offence may be imposed for contraventions.

LONDON TRAFFIC (PARKING PLACES) CONSOLIDATION (AMENDMENT) REGULATIONS, 1954 (S.I. No. 18): operative January 27, 1954.

Parking places at Sutton and Enfield are discontinued; the limits of parking places at Beckenham and Kensington are redefined; a parking place at Tottenham is renamed and new parking places are appointed in streets in Amersham, Camberwell, Hertford, Mitcham, Northfleet and Thurrock.

Police

POLICE REGULATIONS, 1954 (S.I. No. 27): operative January 14, 1954.

The scales of pay and allowances for men and women police officers of ranks from constable to chief inspector have been increased to those shown in the following tables. The figures in brackets show the rates for women officers.

Pay

	Yearly minimum	Yearly maximum
Constable	£445 (£395)	£550 (£495)
Acting Sergeant	£560	£560
Sergeant	£590 (£530)	£635 (£570)
Station Sergeant	£650	£665
Inspector (except City of London and Metropolitan Police)	£700 (£630)	£745 (£670)
Chief Inspector (except City of London and Metropolitan Police)	£790 (£710)	£830 (£750)

Overtime allowances

Constable	5s. 4d. (4s. 11d.)
Sergeant	6s. 2d. (5s. 6d.)

Detective duty allowance

Constable	£40 (£35)
Sergeant	£47 (£41)
Inspector	£54 (£47)

London allowance

Constables and Sergeants	£20.

Similar increases in the pay and allowances of members of police forces in Scotland are set out in the Police (Scotland) Amendment Regulations, 1954, below.

Public Health

ACUTE RHEUMATISM REGULATIONS, 1953 (S.I. No. 1928): operative January 15, 1954, for three years.

Medical practitioners must notify the local medical officer of health of cases of acute rheumatism in persons under sixteen years of age occurring in Cornwall and Lincolnshire, Parts of Lindsey, and Bristol, Grimsby, Kingston-upon-Hull, Lincoln, Salford, Sheffield and Ilford. These regulations replace similar regulations (S.I. 1950, No. 1554) which expired on September 30, 1953.

For penalties for infringement see section 144 of the Public Health Act, 1936, as modified by these regulations.

Scotland

Police

POLICE (SCOTLAND) AMENDMENT REGULATIONS, 1954 (S.I. No. 75): operative January 14 and March 1, 1954.

Pay and allowances have been increased, see p. 225.

The regulation dealing with the discharge of a probationary constable who is unlikely to become efficient or well conducted is amended, in particular such a constable shall have an opportunity to resign voluntarily.

Before sitting for the advanced examination in police duties an officer should pass the elementary examination and have four years' service, this regulation comes into effect on March 1, 1954.

Prisons

The prison of Kirkwall in the Burgh of Kirkwall and County of Orkney has been discontinued and six cells therein may be used as police cells: S.I. 1954, Nos. 15 and 16 operative March 1, 1954.

Sea Fisheries

SEA-FISHING INDUSTRY (FISHING NETS) ORDER, 1954 (S.I. No. 78): operative April 5, 1954.

The minimum dimensions of the mesh of fishing nets which may be used in certain specified waters, including territorial waters, by British fishing boats registered in the United

Kingdom are fixed. Powers of enforcement are conferred on British Sea-Fishery Officers.

For penalties for infringement see section 3 of the Sea-Fishing Industry Act, 1933.

Seamen

MERCHANT SHIPPING (CERTIFICATES OF COMPETENCY AS A.B.) (CANADA) ORDER, 1954 (S.I. No. 64): operative February 3, 1954.

Certificates of competency as A.B. granted in Canada shall have effect for the purposes of section 5 of the Merchant Shipping Act, 1948 (relating to the rating of seamen) as if they had been granted in pursuance of the regulations made under that section. Section 104 of the Merchant Shipping Act, 1894 (which relates to forgery and other offences) applies to the Canadian certificates.

Letters to the Editor

Attendance of witnesses at magistrates' courts

Sir,

One purpose of this letter is to say how welcome I have found the new production of the *Criminal Law Review*, and how useful I shall find it in keeping up to date in matters affecting magistrates' courts.

The second purpose is to express my surprise with the editorial side of the February issue. I refer to your remarks upon "attendance of witnesses at magistrates' courts."

It is surprising to read that the Home Secretary is trying to evolve a system by which it could be found out in advance whether the defendant intended to appear or whether he intended to plead guilty so that the attendance of at least a few witnesses could be avoided.

Ever since 1947 I have had such a system in operation in Halifax. With each summons that is issued a printed notice accompanies it with a request that the defendant will notify the clerk of the court whether or not he wishes to appear in answer to the summons. This system has worked very well indeed and on numerous occasions has avoided the attendance of many witnesses for the prosecution.

I am enclosing a copy of the notices in question, one of which is attached to a summons served otherwise than by post and the other attached to summonses served by post.

Yours faithfully,
J. A. SUTCLIFFE,
Clerk to the Borough Justices.

Halifax.

Notice to accompany a Summons served otherwise than by Post

You are asked to read this notice carefully

The court has power to deal with the case in your absence. If you do not wish to appear in person or by counsel or solicitor to answer the summons (summonses) you should so inform the Clerk to the Justices in the space provided below.

The object of the above requests is to economise in man-power and in particular by saving the time of witnesses.

* * *

Notice to accompany Summons served by Post

You are asked to read this notice carefully

1. You are requested to acknowledge the receipt of the enclosed summons (summonses) by filling up the form of acknowledgment provided below and returning it in the enclosed stamped addressed envelope, without delay, to the Clerk to the Justices at the above address.
2. If you acknowledge the receipt of the summons the court may decide to deal with the case in your absence. Accordingly, if you do not wish to appear in person or by counsel or solicitor to answer the summons (summonses) you should so inform the Clerk to the Justices in the space provided below.
3. If you do not either acknowledge the receipt of the summons (summonses) or appear to answer it (them) either in person or by counsel or solicitor, a further summons (summonses) will have to be issued, thereby causing needless inconvenience and expense to all concerned.

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Books and Periodicals

Reviews:

The Hamlyn Lectures: The Queen's Peace. By Sir Carleton Kemp Allen, Q.C. London: Stevens & Sons, Ltd. 1953. xi and 183 and (index) 8 pp. (12s. 6d. net.)

The Hamlyn Lectures: English Law and the Moral Law. By A. L. Goodhart, K.B.E., Q.C. London: Stevens & Sons, Ltd. 1953. x and 151 pp. (no index). (12s. 6d. net.)

One of the principal objects of the Hamlyn Lectures is to endeavour to inculcate the general public with a realisation of the privileges which in law and in custom they enjoy in comparison with other European countries. What better subject could be chosen to fulfil this purpose than the Queen's Peace which, although readily taken for granted by the entire community as if it were part of the established British way of life, is today assailed and weakened by a violent increase in the number of serious crimes committed. In this series of lectures Sir Carleton Kemp Allen sets out to tell the story of how the Queen's Peace was hammered out over many turbulent centuries, and what a fascinating story he unfolds.

Beginning with the Anglo-Saxon period and tracing the development through successive reigns, some of them progressive, some negative, and some downright retrograde, the lecturer shows how the modern concept of a comprehensive peace of the whole realm was evolved. How very different, for example, is the present position, in which the courts of justice are open to all, from the Anglo-Saxon notion that the King's justice was an exceptional privilege only available to the few. However, as Sir Carleton Allen says, the people of England did not obtain this blessing cheaply, it cost them huge contributions to the royal coffers but it was to be a good investment in the end.

Deviating from what he describes as the "Highway of the Peace" along which the development of the Queen's Peace is traceable, the lecturer conducts sorties into the "Byways of Peace," in the course of which he briefly examines such well-nigh relics as criminal informations, forcible entry, rout and riot, maintenance, champerty and barratry, and gives an illuminating insight into the hideously corrupt state of the law as revealed in the old statutes. Rapacity of the law even under Henry II, a pioneer in grounding the criminal law upon the King's Peace, was, according to the lecturer, nothing compared with the position in the thirteenth and fourteenth centuries, when it reached abysmal depths of corruption, chicane and extortion. Doubt, however, must be expressed with the opinion of the lecturer that it is this fact, persisting as it did in greatly diminishing degree right down to the time of Dickens, which is largely responsible for the popular dislike and distrust of the legal profession. These, in the reviewer's opinion, are hard words to use, are outmoded, and do not correctly represent the present day opinion held of lawyers by the general public.

Proceeding next to a discussion of "officers of the Peace" Sir Carleton Allen brings to bear what he describes as "a little elementary psychology" as the explanation for the failure of the early system, relied on for the greater part of our history, of making the community responsible for policing itself. Collective responsibility as manifested in the group-pledge, the tithing, the hundred, and the frank-pledge, are now mere matters of history, but the lecturer might well have pointed out that at the present time in other troubled parts of the world the idea seems to have been given a new lease of life, with what success remains to be seen. Law enforcement, as the lecturer rightly says, is ultimately dependent on the support of public opinion and this it grievously lacked up to the turning point in the last century when Sir Robert Peel instituted his reform of the police. Sir Carleton Allen does well to explode the myth that the world renowned British police force is a product of our natural genius, and points out that it was achieved in spite of the British people who had for too long been wont to glorify melodramatic brigands like Turpin and Macheath.

Of the present police force the lecturer has nothing but admiration, and considers that it is questionable whether the present establishment —itself far from being filled—is adequate to the volume of crime and to the multiplicity of police duties. Recruitment is, of course, not a mere matter of numbers, it probably being of equal, if not more, importance to get the right men, and until the supply exceeds the demand Sir Carleton Allen's suggestion that the insufficiency of police should be treated as a capital item of expenditure on national defence is unlikely to command serious attention.

Finally, in a rather less vigorous style, the lecturer traces the changes which have occurred in the office of justice of the peace during the six centuries of its existence. Deriving their jurisdiction solely from statutory provisions the lecturer shows how the justices' functions, originally administrative in character, have been prodigiously expanded until at the present day more than ninety-five per cent. of the total number of criminal offences committed in this country are heard and determined by lay magistrates, Sir Carleton Allen makes a strong plea for curtailing their jurisdiction by taking away matrimonial cases from magistrates' courts and assigning them to tribunals manned by whole-time specialists with, the lecturer adds, greater latitude than the present rules of evidence and procedure allow. Not everyone will agree that greater latitude in this respect is likely to achieve a greater sense of justice and, to the reviewer, the proposal savours too much of the view that administrative tribunals can more expeditiously dispense justice than courts of law, which view is denied.

Dr. Goodhart in his series of lectures under the title " English Law and the Moral Law," propounds the admirable thesis that the strength of English law depends in large part on the fact that the people of this country recognise that they are under an obligation to obey the law, which obligation is based, not on force or fear, but on reason, morality, religion, and the inherited traditions of the nation. In no branch of the law, in the reviewer's opinion, is it more important to realise this fact than in criminal law, but according to Dr. Goodhart the danger is that the influence of the moral law in criminal law may be exaggerated. Whereas it may well be true that the vast majority of minor offences are unrelated to moral fault, it is none the less important to remember, as Sir Carleton Allen points out, that the result of multiplying penalties for technical offences is undoubtedly to weaken public support of law enforcement in general. Where the reviewer disagrees with Dr. Goodhart is in the latter's thesis that *mens rea* in most crimes does not connote a consciously wicked mind but rather means nothing more than that the person has intentionally done the prohibited act. All criminal liability is dependent on intentional or voluntary conduct, whether or not the offence is absolutely prohibited, but it is a dangerous doctrine to maintain that such conduct is the complete fulfilment of the established principle that criminal liability depends not only on a guilty act but also a guilty mind.

Another interesting theory advanced by Dr. Goodhart is that it is the death sentence, and not the McNaghten Rules, which brings the law of insanity in murder cases into conflict with the moral law. The lecturer is, however, in error—with all too apparent consequences to the whole theme of his argument—when he states that the present law of insanity is dependent on whether the accused knows that what he is doing is legally *or morally wrong*. In *R.* v. *Rivett* (1950) 34 Cr.App. R. 87, and more recently in *R.* v. *Windle* [1952] 2 Q.B. 826; 36 Cr.App.R. 85, it has been laid down by the Court of Criminal Appeal that "wrong" means contrary to the law and does not depend on the accused's ability to reason about the moral wrongness of his act. Dr. Goodhart maintains that the two questions of criminal guilt and responsibility befitting punishment are separate, and that the real weakness in the present system is the automatic imposition of the death penalty in every case where the prisoner is found guilty of murder. Change this position and, in the lecturer's opinion, the various problems relating to criminal insanity would disappear. Be that as it may, there is surely a responsibility on each member of the legal profession to acquaint himself with the facts and opinions on this troublesome question —they are easily accessible in the Report of the Royal Commission on Capital Punishment—with a view to deciding for himself whether or not the time has come for reforming both the law of criminal insanity and capital punishment.

J. Ll. J. Edwards.

Six Lectures for Justices. London: The Magistrates' Association. 1953. viii and 117 pp. (no index). (6s. net.)

This admirable little book, which comprises only 117 pages and fits the pocket, digests and states in plain English the effect of many Statutes governing the law and practice of magistrates' courts. The lectures cover the whole field of magisterial duties and the book should unquestionably be in the hands of every active lay justice. Seldom has so much sound law been stated so simply and in so small a compass.

There are a few minor points which the authors might care to consider for any future editions of the book. Firstly, it is, perhaps, important to remember that on committing a person for trial in custody (except on a charge of treason or murder) the court must inform the accused of his right to apply to a High Court judge for bail. Secondly in dealing with documentary evidence it would be helpful if further guidance could be given with regard to the admissibility of a document. Prosecutors are sometimes prone to assume that statements which would have been quite inadmissible if given orally by the author of the document become admissible because he wrote them down, *e.g.*, in an account book. Thirdly in the valuable lecture on work out of court there is a heading "Applications for advice." It is appreciated that justices may be called on for advice out of court but it is important that they should strictly avoid discussing the facts of cases which might come before them. It would have been wise to include a word of caution on these lines with a suggestion that such cases may properly be discussed by the parties with the probation officer or, of course, with a solicitor.

There is, however, one matter of some importance on which the authors have in the opinion of the writer strayed from excellence. In dealing with the "purpose of imprisonment" they state "it is now widely accepted that short prison sentences should be avoided where possible" on the grounds firstly that reformative influences which are provided in prison can hardly take effect in a short time and secondly that "the presence of a number of short-term prisoners makes more difficult the task of dealing with the others in a constructive way." A prison, they say, cannot be expected to do much in a few days or weeks and rather grudgingly concede that "there are some offenders on whom it may be possible to make some sort of impression" in twelve or six months.

These opinions are at least controversial. In 1951, of the total number of persons over twenty-one sent to prison by magistrates' courts nearly one half received sentences of not more than two months and over two thirds sentences of not more than three months. If Parliament had thought that a sentence of under six months could seldom do much good it would presumably either have increased the powers of imprisonment of magistrates' courts or have handed over to higher courts some of the present large majority of offences which magistrates' courts have power to try.

If the disgrace and/or discomfort even of a short prison sentence has persuaded an offender not to offend again he *is* to some extent reformed. If an offender deserves a short prison sentence it would obviously be fantastic to give him a longer one so as to ease the task of the Prison Commissioners in dealing with others in a constructive way! It is fair to say that imprisonment is much too difficult a subject to summarise in two pages of these excellent lectures but it was surprising to find no mention of the ordinary factors such as the age of the offender, the prevalency of the offence, etc., which are borne in mind when considering whether imprisonment is necessary.

H. F. R. S.

Wilshere's Criminal Procedure. Third edition, by H. A. Palmer, M.A., and Henry Palmer, M.A., Barristers-at-Law. London: Sweet & Maxwell, Ltd. 1954. xxiv and 293 and (index) 10 pp. (22s. 6d.)

Criminal Law and Procedure in a Nutshell. Ninth edition, by Marston Garsia, B.A., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1954. xx and 192 and (index) 6 pp. (6s. 6d. net.)

The passing of the Magistrates' Courts Act, 1952, has necessitated new editions of Wilshere's *Criminal Procedure* and Garsia's *Criminal Law and Procedure in a Nutshell.* The new Wilshere is in substance

Parts V and VI of Harris and Wilshere's *Criminal Law*, the nineteenth edition of which is awaiting publication. It may be said at once that the learned editors have more than maintained the high standard set in previous editions by the author himself. The reason for this lies largely though not entirely in the advent of the Magistrates' Courts Act itself, for it is a statute which simplifies and codifies much of the relevant law of procedure. Thus the opportunity came for a bold and happy re-arrangement of the chapters on Examining Magistrates and Summary Procedure, and the whole lay-out of the book has inevitably become clearer and more logical. It is only a pity that while achieving so much the Act did not go further and make unnecessary any future references to statutes like the Indictable Offences Act, 1848, and the various Summary Jurisdiction Acts, isolated sections of which still remain in force to irritate students and practitioners alike. But this is not of course the responsibility of the learned editors who rise above their difficulties admirably. Some twenty-eight Acts of Parliament, passed since the last edition, are included, among them the Prevention of Crimes Act, 1953, which relates to offensive weapons. Other amendments have come as the result of a number of decided cases. The most important of these is undoubtedly *Harris* v. *D. P. P.* [1952] A.C. 694; 36 Cr.App.R. 39, and this case, together with the more sensational *R.* v. *Straffen* [1952] 2 Q.B. 911; 36 Cr.App.R. 132, is responsible for the only important addition to the chapters on evidence. The chapter on Appeals has been improved by a substantial re-arrangement, and various aspects of the law relating to juvenile courts have been successfully gathered into two comprehensive sections, headed Constitution and Procedure. More space devoted to the Road Traffic Act and to the Licensing Acts gives us a useful reminder of the practical importance of offences under these Acts, and the immense amount of time which must nowadays be devoted to them.

Generally speaking, the editors seem to have displayed a deeper consciousness of what is and what is not important. For example, whereas the extinct Grand Jury procedure is now relegated to a footnote, a former note on separate trials has been raised to the body of the work where it properly belongs. The notes generally, especially the references to Archbold, are invaluable, and the index and tables well set out. This remains a book which is essential for the serious student of criminal procedure, and for the practitioner it fulfils a need he must always have for a simple and up-to-date guide.

Of the new edition of the *Nutshell* it is perhaps enough to say that it is the work of Marston Garsia, the learned editor of Archbold. The ease and clarity with which the author sets out the elements of the subject have long been and remain the feature of the work. It is perhaps something more than a nutshell, having a surprising amount of detail in important sections like Criminal Libel, False Pretences, and Appeals. But, as the author still insists, it was never meant to be a complete exposition of the criminal law, and its object is to help students with their preparatory and revision work. Many, no doubt in gratitude, would give it a higher standing, and many more will be beholden to Marston Garsia for bringing up to date so invaluable an aid to the Bar Final.

KENNETH RICHARDSON.

Law Without Gravity. By "J. P. C.," illustrated by LESLIE STARKE. Justice of the Peace, Ltd. 1953. x and 50 and (index) 3 pp. 7s. 6d.

Jokes about the law are notoriously difficult. Quips that may have made the afternoon a thing of gaiety and joy in some police court are apt, when later retailed to laymen or laywomen at cocktail parties, to induce a sudden thirst or a desire to flee from the raconteur to the other end of the room. The truth is that for the general public the law is either dramatic or expensive or dull but seldom or never funny. Lawyers' jokes, in fact, mostly appeal to lawyers in the same way that jokes in class appeal to schoolboys. The point of them is not that they should be good jokes, but that there should be jokes at all.

J. P. C. would not, I think, be funny except to other lawyers. By them he will be thought amusing, and his epic about the wretched practitioner who gets up at dawn to attend a county court at 10.30 and then waits there all day without his case ever coming on will strike a chord of general sympathy.

J. P. C. writes in verse, and comic verse is a very difficult form of expression; like figure-skating you either do it brilliantly or you fall down. It is greatly to J. P. C.'s credit that so many poems in this small volume do come off. There is a piece about a suburban circuiteer which almost has the wistful flavour of John Betjeman in describing the charms of the outskirts of London.

O the pleasant peaks of Poplar,
O the owls in Kempton Park,
O for Millwall in the Springtime
And for Limehouse after dark.

Altogether there is a great deal to be said for J. P. C. His wit is without rancour, he is never, thank goodness, macabre, and, except in a piece dealing with the Divorce Court, he is not unkind about the unfortunate people who become involved with the law. In a piece on an honest witness he shows real perception. The honest witness, as he rightly observes, is a terrible person in the box, stupid, apparently crafty and easily caught out in cross-examination

But when it came to judgment
His lawyers were relieved
For the learned Judge saw through him
And in fact he was believed.

Altogether it is pleasant to think of J. P. C. filling in his interminable waits outside county courts stringing together these often funny and sometimes well-turned verses. Take it with you to read on your next journey to Willesden, Clerkenwell or even Bow Street.

JOHN MORTIMER.

Books Received:

Advocacy, Its Principles and Practice. By R. K. Soonavala, B.A., LL.B. Bombay: N. M. Tripathi, Ltd. 1953. xii and 946 and (index) 11 pp. (£2 10s. net; de luxe edition £2 15s. net.)

The Hallucinogenic Drugs. A Neglected Aspect of Forensic Medicine. By Donald McI. Johnson, M.A., M.B., B.CH., Barrister-at-Law. London: Christopher Johnson. 1953. 46 pp. (no index). (5s. net.)

Medical and Scientific Investigations in the Christie Case. By Francis E. Camps, M.D. London: Medical Publications, Ltd. 1953. xxiv and 235 and (index) 6 pp. (30s. net.).

Archbold's Criminal Pleading, Evidence and Practice. Thirty-third edition, by T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. London: Sweet & Maxwell, Ltd. 1954. cxciv and 1596 and (index) 95 pp. (£4 10s. net inclusive of Cumulative Supplements for 1954, Noter-up Service, 7s. 6d. a year extra.)

Magisterial Costs and Application of Penalties. Second edition, by Arthur T. G. Brenchley. London: Shaw & Sons, Ltd. 1953. x and 136 pp. (no index). (21s. net.)

A Handbook of Cautions, Oaths and Recognisances, etc. Second edition, by Joseph Wills and Frank Shannon. London: Shaw & Sons, Ltd. 1953. ii and 15 pp. (no index). (6s. 6d.)

Road Traffic Prosecutions. By G. S. Wilkinson, Solicitor. London: Solicitors' Law Stationery Society, Ltd. 1953. xxxvi and 173 and (index) 21 pp. (25s. net.)

Articles:

Law Quarterly Review, Vol. 70.
- *McNaghten's* case in Australia, p. 24.
- Competence of spouses as prosecution witnesses, p. 28.
- First steps towards Government control over police before Peel, p. 88.

Modern Law Review, Vol. 17.
- Report of the Royal Commission on Capital Punishment, 1949–1953, p. 57.
- Conspiracy and public mischief, p. 72.
- Justices' clerks retiring with the Bench, p. 74.

Journal of Criminal Law, Jan.–March, 1954.
- Pre-Trial Publicity, p. 81.
- Receiving, p. 85.

Solicitor, Vol. 21.
- The Report on Capital Punishment, p. 5.
- "Presence and Hearing" (evidence of statements in the presence and hearing of the accused), p. 17.
- Magistrates' Notebook, p. 18.

Solicitors Journal, Vol. 98.

Summary jurisdiction—some Acts of 1953, p. 51.
Imprisonment and the discharge of a debt or liability, p. 85.

Law Journal, Vol. 104.

Evidence on oath, p. 38.
Evidence of spouses in criminal law, p. 70.

Law Times, Vol. 217.

The Coroners' Rules, 1953, p. 55.

Justice of the Peace, Vol. 118.

The date of conviction, p. 36.
The Lord Chief Justice, p. 52.
Somersetshire Quarter Sessions Records—1625–1639 and 1646–1660, pp. 53, 69, 84.
A lacuna in licensing law, p. 54.
Considering other offences, p. 68.

Police Review, Vol. 62.

Goods vehicles, pp. 38, 58, 92.
Was the officer justified (burglary and housebreaking), p. 74.

Police Chronicle,

Organisation of Singapore's Police Force, January 29, 1954, p. 5.
When is a mechanically propelled vehicle not a mechanically propelled vehicle? February 5, 1954, p. 4.

LEGAL DOCUMENTS etc. from/into ENGLISH, FRENCH, GERMAN, ITALIAN. Triple Interpreter posts translations day instructions received.
H. VERNEY CLAYTON, M.C.
"Woodlands," Market Rasen, Lincs.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Police courts

A correspondent whose letter we publish in this issue severely criticises the use of the term " police court " in this *Review*. This is an age when new modes of description proliferate. Lunatics long ago became persons of unsound mind; criminal lunatics more recently are known as Broadmoor patients; paupers enjoyed a brief spell of dignity as rate-aided persons but since national assistance they seem to form no nominate class. But habits of speech die hard and if we sometimes use police court instead of magistrates' court we hope it will be treated as this month's deliberate mistake.

Extradition laws

Although no change in the existing law as to extradition is contemplated, the Home Secretary has said that he will pay great attention to any proposals made by the Council of Europe after their study of this matter. He does not consider the present laws out of date.[1]

Metropolitan lay justices

When questioned about the possibility of increasing the powers of Metropolitan lay justices to hear cases, the Home Secretary said that it was not yet possible to assess the full effect of the Order (S.I. 1953, No. 496) which he made last year, delimiting the jurisdiction of such justices. He is keeping the matter under review.

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[1] H.C. Debates, Vol. 524, col. 567, February 25, 1954.

Arrangements have been made for lay justices to sit at Bow Street to hear cases in relief of the Metropolitan magistrates and a domestic proceedings court consisting of a Metropolitan magistrate and two lay justices has been set up with jurisdiction to deal with cases arising in any part of the Metropolitan courts area or in the City of London.[2]

Discharged prisoners

During the coming financial year the Home Secretary proposes to act upon the recommendation of the Committee on Discharged Prisoners Aid Societies to pay to such societies an Exchequer grant equal to half their approved expenditure on administration, and on the provision of necessary clothing for prisoners on discharge. He is also arranging for the immediate subsistence needs of prisoners on discharge to be met from public funds and intends to give prison governors a discretion to pay a prisoner's fare to any place in the British Isles where it seems in the prisoner's best interest for him to go.

As to the appointment of prison welfare officers in local prisons, the Home Secretary intends to reserve his decision on the recommendations of the Committee until he has had time to consider them more fully and to consult with the local aid societies.[3]

When questioned, the Home Secretary said he did not think that the older ex-prisoner, discharged after a single conviction, had any special difficulty in finding employment.[4]

Prisons

Replying to a debate on the present overcrowding of prisons, Sir Hugh Lucas-Tooth gave some details of the Government's plans for prisons.[5] The Home Secretary has since spoken of improvements which have been carried into effect or started at Dartmoor.[6]

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[2] H.C. Debates, Vol. 524, col. 1339, March 4, 1954.

[3] H.C. Debates, Vol. 523, col. *152*, February 11, 1954.

[4] H.C. Debates, Vol. 523, col. *153*, February 11, 1954. See also Vol. 523, col. 567, February 25, 1954.

[5] H.C. Debates, Vol. 523, col. 707 *et seq.*, February 5, 1954.

[6] H.C. Debates, Vol. 524, col. 563, February 25, 1954.

Attendance of witnesses at magistrates' courts

We have received further correspondence about the attendance of witnesses at magistrates' courts, see p. 316. The Home Office has now issued a circular concerning this matter, which is printed in full on p. 292.

Lawyers' latin

At the suggestion of a subscriber, we are including before the index a glossary of the latin and Norman-French phrases to be found in the text with their English translation, for the benefit of those not completely familiar with lawyers' language.

The North-Eastern Forensic Science Laboratory

The North-Eastern Forensic Science Laboratory, which was established in 1941 and serves Durham, Northumberland and Yorkshire, has for some time been restricted in its work by lack of space. Now it is to be transferred to larger premises at Haddon Lodge, Rutland Drive, Harrogate, where the staff will have about 50 per cent. more room in which to work.

Judicial appointments

Mr. Joseph Thomas Molony has been appointed Recorder of Exeter, Mr. Percy Malcolm Wright, Recorder of Devizes, Mr. Edward Ryder Richardson, Q.C., Recorder of Stoke-on-Trent, and Mr. Graham Rogers, Recorder of the City of Liverpool. Mr. Paul Sandlands, Recorder of Birmingham since 1944, has resigned with effect from May 15.

Mr. H. J. Hamblen has been appointed Deputy Chairman of the Court of Quarter Sessions for the County of London.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Blackmail

(*Concluded from p.* 172)

By GLANVILLE L. WILLIAMS, LL.D.(Cantab)

Barrister-at-Law, Quain Professor of Jurisprudence in the University of London

Belief that the money was rightfully due

So far we have been considering broadly what threats are reasonable to procure the payment of money or delivery of other property. We must consider in greater detail whether it is relevant that the money or property was legally due, or morally due, or reasonably thought to be legally or morally due, or honestly (though unreasonably) thought to be legally or morally due, or not thought to be due at all. The proposition to be maintained was stated in the previous part of this article under case (3) (above, p. 164), namely that it depends upon what sort of threat was made. Some threats are improper whether the property was thought to be due or not. Some others are improper only if the property was not thought to be due. Examples of the former (threats that are always improper) are threats to assault, or to accuse of wrongful acts other than the wrongful act of not satisfying a liability, or (if *Dymond* (*ante*, p. 164) is right) to prosecute. Examples of the latter (threats that are improper only if the demand is not believed to be right) are threats to sue, or to accuse of not satisfying a liability, or (if *Dymond* is wrong) to prosecute. For example, to threaten a civil action is normally a justifiable mode of obtaining property. But if a firm of solicitors write a letter demanding money under threat of suing for indecent assault, when they know that no assault took place, it seems clear that they are guilty of blackmail. We have, therefore, two kinds of unjustifiable threats: threats that are absolutely unjustifiable, and those that are unjustifiable only *sub modo*, namely where the property demanded is known not to be due.

If this be accepted, the next question is what is meant by the words " known not to be due." The various possibilities have already been propounded. To constitute blackmail where the threat is unjustifiable *sub modo*, is it necessary that the property should, as the accused knew, not be legally due? Or is it necessary that it should not be due either morally or legally? What if, although the property was not due, either morally or legally, the accused reasonably believed that it was? Or what if he honestly, though unreasonably, believed that it was?

It is submitted that the word "due," in the foregoing formulation of the rule, means due legally *or* morally. A threat that is unjustifiable *sub modo* does not constitute blackmail if the property demanded was due either legally or morally. The admission of moral claims in this connection accords with the decision in *Burden* v. *Harris* (above, p. 169), for it was there held that the demand for payment of a gambling debt is not an offence, even though coupled with the threat of "posting" the debtor as a defaulter. A gambling debt, though void at law, is commonly regarded as a "debt of honour," a "debt among gentlemen," and, accordingly, is a moral obligation for the purpose of the rule. The rule for such debts was stated by Farwell L.J :—

> "Everyone is entitled to enforce, if he can, the performance of a moral obligation, at any rate so long as it is done by the person for himself, and so long as no more than the full performance of the obligation is required" (*Hyams* v. *Stuart-King* [1908] 2 K.B. 696 at p. 726).

Yet if the alleged wager had never been entered into, and the accused knew this, the threat of posting would constitute blackmail. The threat of posting is one that is unjustifiable *sub modo*; but a moral right to the money demanded is sufficient to justify it.

Next, it seems clear that reasonable belief in the existence of a right (legal or moral) is sufficient, even though the right does not in fact exist. Section 29 (1) (i) does not require the existence of a right to the property, but only the absence of reasonable or probable cause for the conduct of the accused. Hence it is enough that the accused reasonably believed in the existence of a right, even though, owing to his mistake of fact or law, no such right existed. Australian authorities for this view have already been considered (above, p. 167).

Further, the better view is that the belief need not be reasonable, and that any honest belief in the existence of a right is sufficient. This proposition is not expressly contained in section 29 (1) (i), and the reference in that paragraph to "reasonable cause" may be thought to be an implied requirement that the belief should be not merely honest but reasonable. It is submitted that this would be a misreading of the paragraph. According to the present judicial interpretation, the paragraph requires the conduct of the accused to be reasonable in all the circumstances, and we have already seen that in the case of some threats the question of reasonableness (*i.e.*, the question whether the threats are justifiable or not) turns on whether the accused knew or believed that he had a right to the property demanded. If he honestly (though unreasonably) believed that he had a right to the property, then it was reasonable for him to make the threat in question. On the assumption that the demand is believed to be right, the threat is reasonable; there is no requirement that the belief should itself be reasonable. An alternative way of putting the matter would be to say that the honest belief excludes *mens rea*. However one frames the argument, the conclusion must be reached somehow, for any other view would stretch the law of blackmail too far. Thus, if a firm of solicitors write a letter demanding the payment of a sum of money to their client by way of damages, believing in the validity of the claim (or at any rate not disbelieving it), it seems clear that the case would not be one of blackmail, even though the solicitors' belief in their client's right was unreasonable. (On the other hand, as already said, if the solicitors knew that their client had no right, it seems that the case would be one of blackmail, even though all that the solicitors were threatening was a civil action.)

This conclusion is supported by a dictum of Lord Atkin in *Thorne's* case ([1937] A.C. 797 at 808–9), commenting upon *Dymond.*

> "The argument for the Crown was that an indecent assault differed from a common assault, and that even if the accused woman had been assaulted it would not justify a claim for compensation and that her belief that it would was irrelevant. The court agreed with this contention : and I express no opinion upon it. But language was used in the judgment which seemed to indicate that even if the mistake were as to a fact which would have constituted a reasonable cause such a mistake would be irrelevant; in other words there must be in fact a cause not merely a genuine belief in a cause. This seems to me incautiously expressed : and I do not think that doubt should exist upon a well-established proposition in

> criminal law that normally a genuine belief in the existence of facts as apart from law, which if they existed would constitute a defence, is itself a sufficient defence."

It will be noticed that Lord Atkin excludes mistake of law from his proposition that belief in the existence of a right is a defence even though the belief is mistaken. In this he seems, with all respect, to be over-cautious. It is true that ignorance of the criminal law is no defence; but otherwise, it is submitted, a mistake of law may exclude *mens rea* as effectively as a mistake of fact. If D. believes that the law is that he has a right to damages, it is submitted that he does not commit blackmail by demanding those damages under threat of bringing an action for them, even though he makes a mistake of law.

The conclusion is that where the threat made is unjustifiable *sub modo*, any belief in the existence of a legal or moral right, whether the belief is reasonable or otherwise, and whether or not the right in fact exists, is sufficient to justify the threat. The actual decision in *Dymond* may be supported on the ground that one of the threats, namely, the threat of publicity in respect of the immoral act, was absolutely unjustifiable, so that the question of belief in right did not arise. The other threat in that case, namely, the threat of prosecution, ought to be regarded merely as unjustifiable *sub modo*, and in that respect it is submitted that Lord Atkin's doubt as to the expressions used in the judgment was well founded. It is true that the distinction advocated in this article between threats absolutely unjustifiable and threats unjustifiable *sub modo* has never been judicially drawn; but it is not inconsistent with the authorities and seems to be required by common sense and ordinary ideas of morality.

The interpretation of section 29 (1) (ii), (iii)

So much for section 29 (1) (i). Turning to paragraphs (ii) and (iii), these do not in terms require the conduct of the accused in making the demand, accusation and threats to be without reasonable cause, but it seems clear as a matter of general principle that this must be implied. Suppose that D writes to P accusing him of having fraudulently obtained money from him on a forged instrument, and demanding restitution. This is an accusation of an offence punishable with fourteen years' imprisonment (Forgery Act, 1913, s. 7), and therefore falls within the two paragraphs. If the two paragraphs are read literally, D has no defence to a charge of blackmail. Yet it seems to be obvious that if D honestly believed in the truth of the charge, it cannot be blackmail, for he has not the requisite *mens rea*. Blackmail is a crime requiring wrongful intention, not a crime of negligence or misadventure. There cannot be a wrongful intention if no improper threat is made and if the money or property demanded is thought to be legally due. On the whole it seems that, notwithstanding the difference of wording, the same general principles as apply to paragraph (i) apply to paragraphs (ii) and (iii).

The difficulty does not arise with section 29 (2), which expressly requires an intent to defraud or injure.

The interpretation of section 30

Section 30 presents problems of its own. It has been pointed out (above, p. 87) that the section was originally intended to apply only to cases of attempted larceny. With the extended interpretation of the term " menaces " its scope became widened, but its old connection with larceny was reaffirmed in *Bernhard* [1938] 2 K.B. 264, C.C.A. The accused, D, was a Hungarian woman who had been the mistress of P. After the association had ceased P promised (otherwise than under seal) to pay her a sum of money, but did not keep his promise. D was advised by a Hungarian lawyer that the promise was legally enforceable, though actually, assuming it to be governed by English law, it was void for want of consideration. D went to P and upon his refusal to pay threatened to expose him to his wife, and also to the world at large by an announcement in a newspaper. D was prosecuted under section 30.

It was held that she could not be convicted. Section 30 requires an intent to steal, and the word " steal " takes one back to the definition of stealing in section 1. This definition requires the taking to be without a claim of right. In the present case, since B honestly thought that she had a right to the money, she had a claim of right to it within section 1; her claim of right negatived an intent to steal, and consequently her conduct did not fall within the words of section 30.

The decision appears to be logically inconsistent with *Boyle* (above, p. 87). *Boyle* decides that the accused can be guilty of an intent to steal under section 30 even though a completed taking would not be larceny, because it would be with the consent of the owner. This seems to involve saying that the words "with intent to steal the same" in section 30 do not incorporate the technical definition of stealing. *Bernhard* decides that there cannot be an intent to steal if a completed taking would not be larceny owing to a claim of right. This seems to involve saying that the words do incorporate the technical definition of stealing. Hence these words in section 30 both do and do not incorporate the definition of stealing in section 1. They incorporate the requirement of absence of claim of right, but not the requirement of taking without consent. It is submitted that the courts should either read the whole of section 1 into section 30 or refuse to read any of it; and of the two possibilities the former course appears to be that required by the wording of the section. This would mean that *Boyle* is wrong and *Bernhard* right.

The upshot is that, whatever menaces are used, there can be no conviction under section 30 if there is a claim of right to the property, that is to say an honest belief in the legality of the demand. If there is such a claim of right, it does not matter how outrageous the threat is: whether it is a threat to murder, to libel, to prosecute, or anything else. The facts may, however, justify a conviction under section 29 if the demand is in writing or the threat is to accuse of one of the crimes mentioned in that section, or under section 31 in other cases. In *Bernhard* there was no count under section 31. If such a count had been added, could the accused have been convicted under it? If, thinking herself to have a legal right, she had contented herself with threatening to give publicity to the fact that P had not performed his promise, it is submitted that she would not have been guilty even under section 31. In fact, however, she threatened to accuse P of discreditable conduct other than the conduct of not paying a debt of honour, and this threat was absolutely unjustifiable and brought her within the penalty of section 31.

In cases that fall only within section 31 (because a claim of right takes them out of section 30) the maximum punishment is two years' imprisonment. The disparity of punishment between demands in writing and demands not in writing here becomes very pronounced.

What if the accused in *Bernhard* knew that she had no legal right but thought that she had a moral right to the money? Professor Campbell suggests that since in the law of larceny a claim of right means a claim of legal and not moral right, there may be a conviction under section 30 if the accused knew that he had no legal right, even though he thought he had a moral right. On this view, if D threatens to post P as a defaulter in a sporting club unless P pays a lost wager, D can be convicted under section 30 unless he thought that wagers were legally enforceable. It is difficult to imagine that the courts would in fact apply the section in this way, though D's only defence would be in respect of the general requirement of *mens rea* in criminal law. (*Cf. Burden* v. *Harris*, above, p. 169.) The same remark may be made about section 30 as Lord Russell made about section 29 ([1937] A.C. at 812): it is aimed at blackmailers, and should not be construed as applying to any case that would not be regarded as blackmail. Consequently it is submitted that wherever the accused would have a defence (*i.e.*, a justification) if the case fell under section 29, he will also have a justification under section 30. In addition, he has under section 30 the defence of claim of right.

The interpretation of section 31

Turning to section 31, it does not expressly incorporate a mental element or a requirement of absence of justification for the conduct, except that where the object is to acquire a valuable thing the section requires an "intent to extort." It seems, however, that the same rules would be applied as have been suggested for section 29 (1) (i).

Aspects of Forensic Science

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Questioned Documents

When documents are submitted for examination the purpose in view will often determine the type of examination to be made. In some cases the information required may relate solely to authorship in the case of handwriting, or a particular source of origin (*e.g.*, office) in the case of typewriting—*i.e.*, identification with a particular machine, which, in turn, may point to a particular person. In other cases an examination may be required to prove alterations, erasures, additions, and if possible, the original before the modifications were made. In others, again, the information sought may be the answer to the question: Is the document genuine or a forgery?

The more general examinations can be carried out by the several Forensic Science Laboratories, but the determination of authorship of handwriting, or typewriting, whether it be on genuine or forged documents is one which calls for experience and specialised technique. In the case of typewriting it also calls for a comprehensive collection of typewritten specimens covering, not only all known makes of typewriters, but also changes or modifications which have been introduced from time to time by the makers.

At one time the only evidence admitted by the courts on the subject of authorship of handwriting was the direct testimony of a person who had actually seen the writing done, or of some person very intimately associated with the alleged writer, who had every opportunity to acquire an intimate knowledge of characteristic features of the person's handwriting, *e.g.*, members of the family, or persons known to have been in frequent correspondence with the alleged writer.

Later, the dogmatic opinion of a so-called handwriting "expert" was accepted. In many cases the "expert" had no scientific training and very limited facilities, his claim to being regarded as an expert being that he had acquired the ability to discern different handwritings by long experience. In some cases it became apparent that the conclusions of such "experts" were based on very limited and insufficient data, and the degree of certainty with which they expressed their opinions was not justified by the observations they had made. I recall a case in which one of these "experts" identified a particular document as having been written by a maid, whereas ultimately it was established by other evidence that the document had been written by her employer. If the "expert's" evidence had been accepted a serious injustice would have been done—the so-called "expert" had failed to detect a forgery.

Dr. C. Ainsworth Mitchell[1] carried out a considerable amount of work on proof of handwriting. Today it is possible for a truly scientific expert to demonstrate to the court by scientific methods the resemblances or differences between specimens of handwriting, and indicate how and why he has drawn a particular conclusion from his investigations, and, in particular, the degree of probability. It is for the court to decide what significance shall be attached to such evidence; no doubt in many cases other evidence in the case will assist the court in the view which shall be ultimately accepted.

Investigations of this type are limited and it would not be reasonably possible for a member of the staff of each laboratory to obtain the necessary skill and experience to give an opinion of real value. Hence, the examination of documents relating to handwriting and typewriting is centred in one laboratory, namely, the Forensic Science Laboratory at Cardiff, where the Director, Dr. W. R. Harrison, has not only gained considerable experience from documents drawn from a very wide area, but has also accumulated data relative to mechanical aids—typewriters, adding machines, etc. Such experience undoubtedly adds substantially to the value to be attached to any expressed opinion.

A comprehensive examination of a document may include identification of inks, pencil pigments, paper stains, water marks, etc. Thus, Forensic Science Laboratories are able to bring to bear on a particular problem biology, chemistry, physics and photography experts.

GENERAL FEATURES OF DOCUMENT EXAMINATION

It is beyond the scope of the present article to deal with the more complex technical details of document examination; a review of the more general features is indicated.

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[1] *Documents and Their Scientific Examination* (1935), published by Griffin.

Documents submitted for examination should be treated with considerable care, and should be handled, folded and marked as little as possible; new folds should not be introduced, even repeated folding along existing folds may be detrimental since repeated folding tends to modify the paper in the region of the fold, which in turn may modify some important feature of the document.

No additions should be made by pen or pencil except, perhaps, on occasions some mark of identification at a point remote from the material parts of the document.

An altered cheque was submitted for examination, the alteration was established by photographic methods; the cheque had ben folded *once* whereas the normal procedure for accommodation in the firm's envelopes required *two* folds.

In most cases it is advisable to photograph the document before examination in order to have a record of the document as received.

In general, documents submitted for examination fall broadly into two classes: (a) the whole document as a suspect forgery; (b) portions of the document which have been forged or altered.

In some cases evidence of alteration may be obvious and the information sought is the original, *i.e.*, what was there before the alteration was made.

In the less obvious cases careful scrutiny is first made by reflected light, also by angular or oblique lighting. Suspect zones of alterations and/or erasures should be further submitted to examination by the microscope.

The commonest type of examination relates to erasures and alterations on ink-written documents, and in the determination of the original, photographic examination by ultra-violet light often gives the required information. Success from this examination depends on the behaviour of inks under ultra-violet light; writing with some inks is suppressed, whilst others respond and the writing is made more intense. In the case of erasures, a result by this method will be influenced by the presence of the original ink in the fibres of the paper in the zone of the erasure.

During the war a man was stopped by a police officer and asked to produce his registration card; in so doing he produced a wad of papers from his pocket which included a Post Office Savings Book; the police officer expressed some surprise and asked to see the book. The officer immediately detected evidence of erasure and overwriting, also several recent withdrawals. The man gave an explanation which was not satisfactory to the officer, who detained him, and the book was sent to the laboratory for examination. Evidence of erasure, and also evidence of underwriting was confirmed. Examination by ultra-violet light revealed, not only the name of the owner (a lady), but also the address. This information was immediately communicated to the police (within half an hour of receipt of the savings book). The lady was contacted—she had had her bag containing her bank book stolen some days earlier. The man was charged with the offence and found guilty. The speedy result in this case was possible because the ink used in the alteration was "suppressed" by ultra-violet light, whilst sufficient of the original ink remained in the paper which responded and could be easily read. Very convincing photographs taken under ultra-violet light were produced in court.

It will be apparent that had the alteration been carried out with an ink which also responded to ultra-violet light, this method would not have been successful, in which case infra-red photography, which often gives the desired result, might have been successful.

In some cases there is no evidence of erasure but alterations and/or additions are suspected. Microscopic examination will often reveal the alteration, particularly when the added letters or figures join up with original writing, the junction (and overlap) often being clearly revealed under the microscope.

During the early years of the war (1940) a man purchased a second-hand car believing it to be a 1934 model. A short time after the sale the car gave trouble and the new owner became suspicious; he examined the registration book more carefully, he suspected alteration of the year of registration and informed the police, who, in turn, submitted the registration book for laboratory examination. Microscopic examination clearly revealed that the original entry was 31 and strokes had been added converting the "1" into "4." Infra-red photographs showed clearly the alteration and, to the bench of magistrates, were convicing proof of alteration.

INKS

Ainsworth Mitchell defines "Ink" as a liquid medium by means of which words or characters are recorded upon paper or other fabric in a more or less permanent form.

The exact composition of ink is determined by the use to which the ink is to be put; thus, "writing ink," "copying ink," "printing ink," "marking ink." The principal kinds of ink in use at the present day are carbon ink, iron gall ink, logwood ink, and aniline ink. The chemistry of inks is a subject in itself, and in the case of certain types of documents, *e.g.*, suspected forgery of old documents, such work is essentially for the highly trained expert.

Iron gall inks, blue black inks

Iron gall inks (gallotannate inks) are the commonest type in use today; originally this type was simply a mixture of sulphate of iron and an infusion of nut galls. This, however, by itself gives on paper a relatively faint colour; this gradually darkens, due to oxidation, becoming, finally, black. In order to make this more visible when first applied to the paper, the iron gall ink was blended with a provisional blue colouring matter, sometimes indigo or an aniline dye. Thus we get what came to be known as "Blue Black Ink." When the ink is first applied only the blue of the dye is apparent; this, however, slowly pales owing to oxidation whilst the iron gall ink (tannate) darkens, ultimately becoming black. The time factor for these changes varies with the different blends but is often useful in determining the age of writing for comparatively short periods.

Since blue black inks are essentially a solution, the ultimate writing being the residue, it is desirable in the case of documents of importance that the ink should penetrate and be absorbed by the fibre, hence the choice of paper and instrument of writing should be considered—rough surface and hard pen nib. Penetration into the fibre also makes alterations more easily detected.

Formerly, the original type of blue black ink led to substantial deposits on the nib, and in the case of fountain pens, led to the blocking of the feed. The modern tendency is to reduce the iron content and increase the dye content.

"Ball pen" inks

With the introduction of the "Ball Pen," further changes have taken place, in fact some of the modern inks are relatively weak solutions of aniline dyes, some of which are water soluble.

The introduction of the ball pen and weak water soluble inks has made the alteration of ink-written documents more easy to do and less easy to detect, since with a smooth paper and a ball pen there is no material fibre penetration; thus, the ink writing can be easly removed, leaving no evidence of disturbance of the paper surface.

A certain county council paid some of its employees working in rural areas by weekly open cheque. Many of these workmen, not having a banking account, arranged for them to be cashed locally. In one instance such a cheque (now in my possession) was sent to a workman, and, not having a banking account or a fountain pen, he signed the cheque with an ordinary steel nib and a blue black ink. He put the cheque in his pocket intending to cash it later. His work was out of doors and he was caught in an unusually heavy thunderstorm. On returning home he hurriedly changed his clothes and hung them up to dry. Later he remembered the cheque. Imagine his surprise when he found that his name and the amount in words and figures had completely disappeared. What did remain was his own signature and the stamped signature of the treasurer. Further tests revealed that the ink which had been used was completely water soluble and the writing on a cheque could be completely removed simply by floating for a very short interval on a dish of water.

Another incident of a similar type relating to cattle food permits occurred during the war. A farmer became suspect on account of the amount of cattle food he was receiving—a number of the permits which he had submitted in order to obtain his supplies were sent in for examination—there was no evidence of alteration or erasure except in one case—the ink used for the number of units on the submitted permit was not readily water soluble—other evidence indicated that the *original* entries were made with a readily water soluble ink. The coincidence of alteration in the one document indicated that the original was either " 7 " or " 9 "; the portion of the downstroke below the line had been incompletely removed whilst the figures on the permit as presented consisted of two figures, not readily water soluble, which did not extend below the line, *i.e.*, did not include " 7 " or " 9." As the result of a series of similar incidents which indicated the ease with which entries made by the ball pen, using weak solutions of water soluble dyes could be removed, recommendations were made that such inks should not be used on official documents.

Inks for important documents

In general it is desirable to use gallotannate inks on important documents, using a pen nib (preferably steel pen), which facilitates absorption of the ink into the fibres of the paper, thereby making erasure much more difficult. It would appear that banks and solicitors are insisting on this procedure on all important documents—themselves providing both ink and pen.

ALTERATIONS, ERASURES, STAINS

Mechanical erasures, by penknife, rubber, or other abrasive, can generally be seen by the naked eye, but if skilfully done, examinations under the microscope may be necessary. Since these methods involve in some degree removal of the surface of the paper, the area of the erasure can often be detected by holding the paper against the light. The difference between the normal paper and erased zone can often be intensified by the addition of a few drops of benzene in the vicinity of the suspect zone, when the difference in translucency will be intensified.

If the erasure has been made by the use of ink eradicators it may be difficult to detect if considerable time has elapsed. If the eradicator has been recently applied examination under ultra-violet light will clearly indicate the zone treated. Expert forgers are aware of this, and have been known to wash away the residue of the eradicator with distilled water. Where the original writing was with an iron gallate ink, it is often possible by treatment with chemicals to detect the ink and in some cases to bring up a considerable amount of the original writing.

In some cases suspect alterations and/or erasures have been obscured by blots or stains—in such cases the original writing can often be revealed by photographic technique—ultra-violet or infra-red photographs.

Obliterations by stains or over-stamping can often be detected by the use of photographic filters.

An unusual example of this type relates to a garage proprietor who was suspected of acquiring surplus petrol by using petrol coupons which were not lawfully available for the period in question, *i.e.*, the coupons were out of date. Several of these coupons were submitted for examination. The official date of expiry was indicated by a stamp using green ink. It was observed that the date of expiry had been obscured by heavily stamping in the "date" area with the garage stamp, using a strong violet ink. By the use of suitable photographic filters it was possible to filter out the garage stamp and reveal the true date of expiry. In some cases, however, where the over-stamping was exceptionally heavy, the method was not satisfactory. Ink used on the garage stamp was obtained and a special filter was prepared, using the ink thus obtained, a photograph was taken through the filter which clearly revealed the date of expiry.

DESTRUCTION OF DOCUMENTS BY BURNING

Destruction of incriminating documents by burning is not uncommon; *completely* to destroy bulk paper is not easy, and owing to the limited air supply documents or portions of documents are merely carbonised. In such cases it is often possible by treatment with chemicals (*e.g.*, silver nitrate or chloral hydrate) to bring up the writing or printing which can be demonstrated by photographs. Examples of this sort occur in a safe robbery where the whole safe is removed and opened elsewhere; much of the material in the safe is of no value to the criminal and is often destroyed by burning. Thus, in one case, carbonised paper recovered from the firegrate in the house of a suspect was identified with a particular safe, the one which was the subject of inquiry.

It is not often realised that when a closed safe is involved in fire, owing to the very limited air supply the documents in the safe remain intact but in a carbonised form—thus it has been possible to determine fairly accurately the contents of the safe. In a case of embezzlement, a section of a building which included a safe was involved in fire; it was subsequently claimed that a considerable sum of money in notes was alleged to have been destroyed by the fire. The contents of the safe, though carbonised, were intact, and it was possible to establish that only a few notes were in the safe at the time of the fire. It was possible to give the serial letters and numbers of the notes in the safe. It will be realised that when a safe is involved in fire it is essential that the safe cools down before opening (which takes place very slowly owing to its construction); if it is opened whilst still hot inside the influx of air may cause some of the contents to inflame and become converted to ash.

PENCIL WRITING

Pencils used in writing may be the ordinary blacklead, having essentially a graphite base, or coloured pencils such as indelible or copying ink, blue or red pencils.

Blacklead pencils

It was at one time believed that it was impossible to distinguish between one lead pencil and another when in the form of writing. The work of Mitchell, however, shows that the writing done by different pencils may produce quite marked characteristic features which enable a differentiation between different pencils, as revealed by microscopical examination and chemical tests. Whilst pencil writing is essentially a transfer of graphite to the paper, the actual marks are influenced by the quality of the graphite and the other ingredients associated with the graphite; they are also influenced by the quality of the paper used. Thus, a Borrowdale graphite of relatively low carbon content may give better results than a graphite of higher carbon content in which there is a higher crystalline carbon content. Natural graphites are essentially carbon associated with silicate, iron and alumina. In a poor Borrowdale graphite the carbon may be as low as 52 per cent. whilst a good variety contains as much as 91 per cent. carbon. The actual composition of the material used for pencils varies somewhat with different manufacturers and with the type of pencil (hard or soft).

In general, however, it consists of mixtures of graphite with fine clay, usually with the addition of a little wax; a little lamp black may also be added, or other pigment. The hardness is influenced by the proportion of clay and degree of baking.

Pencil writing is literally a transfer of the material of the pencil to the paper, but on account of the very small amount of material transferred, the recovery and ultimate analysis is not possible. It is, however, possible to obtain valuable information by low power microscopical examination: thus, differences in (a) colour and distribution of the pigment; (b) the presence or absence of striations, also the sequence of striations; (c) variations in lighting effects when the writing on the paper is illuminated (direct and oblique).

It should be noted that depth of colour may be influenced by the pressure applied in writing—a soft pencil with light pressure may be mistaken for a hard pencil mark with heavier pressure.

The distribution of the graphite varies somewhat with the passage of the pencil over the fibres—build-up at one side more than the other; again, vertical, horizontal and oblique lines show variations of graphite intensity, thus alterations or additions may sometimes be detected by comparisons under the microscope. The extent to which these variations occur is, of course, influenced by the quality of the paper.

Erasure of pencil writing

Pencil pigments, unlike ink, do not undergo any detectable chemical alteration on paper. Evidence of erasure of pencil writing by india rubber, bread or other mild abrasive, involves the disturbance of the surface of the paper which in many cases is easily observed by the naked eye; in others it is readily detected by miscroscopic examination.

In the coarser papers graphite can often be detected in the fibres of the paper.

When writing in pencil many persons, probably quite unconsciously, apply greater pressure than in ink writing, with the result that although the pigment has been removed the writing is still there as depressions in the paper, and it is surprising how often by suitable technique this writing can be revealed, such methods include the treatment of the paper surface with iodine fumes, examination with polarised light, photographic examination with oblique light. In quite a number of cases the latter method has been particularly successful in this laboratory.

During the war, letters written by prisoners of war in some camps were not only subject to censorship, but such letters were to be written in pencil on the paper supplied. On one occasion a lady came to me with a letter she had received from her son who was a prisoner of war. On several lines the writing had been removed by the censor; the lady was anxious to know what had been deleted. The paper supplied was a glazed dextrin-coated paper. The censor, wishing to delete certain lines simply applied a wet paint brush; the water dissolved off the dextrin, which also carried away the pigment. A photograph taken under oblique lighting clearly revealed the writing as depressions in the paper and satisfied the anxious parent.

In a case (*R.* v. *Smethurst* (1942) Chester Assizes) of conspiracy and false pretences, the material submitted included the time sheets of certain workmen and also sheets relating to the use of motor vehicles. The time sheets were quite correctly made out in pencil writing by the workmen and the drivers of the motor vehicles. The contractors were doing work for a local authority and also for private customers. Suspicions arose which suggested that the authority was being charged with workmen's time and motor vehicles' time which were in fact being spent on work for private customers. Examination of a considerable number of time sheets by oblique light produced very convincing evidence that the suspicions were well founded. For example, the time sheet of one workman as submitted to the authority indicated that on certain days he had been engaged on blitz demolition work; examination by oblique light revealed that the original entry made by the workman indicated that he had been working on the material days on an entirely different job for a private customer. Similarly, the work sheets relating to motor vehicles alleged to have been used for local authority work had, at the material times, been used on work for a private customer. Thus, the contractor was being paid twice for both workmen's time and motor vehicles' time.

In this case it was possible to produce very convincing photographs to the court.

Copying ink pencils

The most comprehensive investigations have been carried out by Mitchell. A copying ink pencil is usualy a blending of graphite, fine clay (Kaolin) and an aniline dye (*e.g.*, methyl violet); sometimes binding materials such as sugar and gum arabic are also used.

In the examination of writing both microscopical and chemical tests are used. Originally such pencils were used because it was possible even after a fair interval to obtain a copy on another sheet by the moisture and pressure. Copying ink pencils are rarely used for this purpose today, but rather on account of the fact that such writing is less easily removed than lead pencil writing and the dye can be detected in the fibre; such pencils being loosely described as "indelible pencils."

Blue and red pencils

The pigment employed for blue pencils may include ultramarine, cobalt blue, prussian blue or an aniline dye; for red pencils red lead or an aniline dye. Here, again, the technique would include careful chemical analysis in addition to physical features revealed by microscopic examination. On occasions comparison of shade of colour under a comparison microscope may be of value.

PAPER

The earliest type of writing paper was a material prepared from the pith or stem of the papyrus plant and was used by the early Egyptians and Greeks, and later by the Romans. Then came parchment—still used in certain legal documents—made from the skins of sheep and goats; then vellum from the finer skins of calves and kids. Paper making proper is said to be attributable to the Chinese.

Textile fibres such as linen and cotton—usually in the form of rags—were later used; subsequently straw, chemical and mechanical wood were introduced. Thus, in forensic work the identification of the fibre components of a paper may be of paramount importance. For example, such investigations have been of value in the detection of not only forged, written documents, but also in the detection of forged notes.

Water marks

Important evidence has on occasion been obtained from a comparison of water marks; evidence not only indicative of the manufacturer, but also a date of manufacture has been obtained. Water marks are frequently a sort of " hall mark " of a manufacturer and type of paper.

Miscellaneous

Distinctive chemicals are used in certain types of paper, others are used to load or modify the paper, hence chemical analysis of the paper, including ash value, can be of assistance in detecting a forgery.

In addition, information relating to thickness, weight of unit area, comparison of torn fragments which match any of serrated edges, etc., have been of value.

In an arson case, in which haystacks had been fired, a number of loose cloakroom tickets were found at the scene; these fell into groups of consecutive numbers. When a suspect was searched, a book of cloak room tickets was found in his possession. Many of those found at the scene agreed with missing tickets from the book. It was further possible to identify definitely the tickets from the scene with the book, analysis of the paper, comparison of torn and serrated edges with those remaining on the counterfoils or portions of counterfoils in the book.

In this laboratory three cases of split notes have been investigated, the method being to split new notes so as to give a good front and a good back. The products were, of course, very thin and would easily have been detected, so that the thickness was restored by gumming on a layer of paper. The resulting product was then folded so as to expose only the good side of the note (front or back). By choosing a suitable victim the folded notes were successfully presented for payment in respect of a comparatively small purchase. In one case a second attempt led to arrest, but in another it was the method of restoring the thickness which led to the offender. The thickness had been restored by using gummed labels (two and a half labels being required). Suspicion fell on soldiers of a U.S.A. camp. A specimen book of labels from the camp was compared with the labels on the back of the note. They agreed exactly in size, paper composition and perforation—the identification of the particular individual was, of course, by "police technique."

The Aliens Order, 1953

By A. E. Jones
Magistrates' Clerk

On April 1, 1954, the Aliens Order, 1953, came into operation, replacing the Aliens Order, 1920, and all the amending Orders which the thirty-odd years of that Order's life had made necessary. The new Order preserves the main features of the old law but the opportunity has been taken to regroup its provisions more logically, to make their wording more concise and to clarify their intention where ambiguities existed. At the same time certain changes have been made, the most important of which are as noted in the following articles:—

Article 2 (1) (*b*) exempts aliens landing merely to change planes at an airport from the necessity of obtaining the permission of an immigration officer.

Article 5 (2) provides that notice of landing conditions shall be deemed to have been given to an alien if it is given in writing to a responsible person in charge of a party of which he is a member.

Article 8 (1) (*c*) (ii) authorises an alien who has been refused leave to land to be sent to a country which there is reason to believe will admit him, as an alternative to being sent back to his country of origin.

Article 9 (2) allows deserting alien seamen and stowaways to be removed as persons refused leave to land, even although two months have elapsed since their arrival in the United Kingdom.

Article 11 (1) creates a new offence by laying down that the captain of a ship or aircraft "*shall* take such steps as may be necessary" to prevent persons landing until they have been examined by an immigration officer. Previously the operative word used was "*may*" except when the captain was requested by an immigration officer to detain the alien.

Article 14 (1) (*c*) requires registration under the Order by personal attendance of aliens over 16 years of age including a person over 16 who becomes an alien while in the United Kingdom.

Article 16. There is no longer need for an alien to give particulars of an intended change of residence.

Article 16 (4) allows an alien to give as his referee under the Order "any person resident within the United Kingdom." This might include another alien, but previously only a British subject could be a referee for this purpose.

Article 18 (1) omits the previously existing requirement on an alien to produce his registration card on demand by a member of Her Majesty's Forces.

Article 19 (4) empowers a chief officer of police to exempt from the "hotel register" provisions of the Order any "school, hospital, club or other institution or association."

Article 21 (4) omits the previously existing power of a court to require bail in the case of an alien whom it releases after making a deportation order. It seems that this article replaces the Directions of the Home Secretary, dated March 29, 1920, on deportation orders and that new Directions will be necessary with regard to the certificate required from the clerk of the court and the lodging of detainees in prison.

Article 24 (3) has the effect of applying the Order to a member of a foreign force otherwise exempt, if he is on leave for more than twenty-one days or absent without leave.

Article 26 (4) enacts that proceedings against others than aliens for offences against the " hotel register " provisions (art. 19 (2)) and the provisions concerning the making of false statements, returns, etc. (art. 25 (3)) are not to be taken without the consent of the Director of Public Prosecutions. Non alien offenders against these provisions are also by art. 28 (1) exempted from arrest without a warrant.

Article 26 (5) adds an alternative of " within six months after the commission of the offence, whichever is the later " to the provision that proceedings for an offence of making a false statement, etc., may be instituted within two months after the making of the statement.

Article 28 (4) enables any person detained under the Order or by a court order or sentence to be taken in police custody to and from any consulate to ascertain his nationality or to make arrangements for his admission to another country.

Second Schedule: Among the particulars to be entered in the register of aliens " Signature (*or* finger prints if unable to write in the characters of the English language) " replaces " Signature (which, if required, shall be in the characters of the language of the alien's nationality) *and* finger prints if required." Particulars about employment are also required.

Certain powers contained in the Order of 1920 are not carried over, particularly those which arose from war conditions. It is presumably the spirit of the welfare state which has led to the elimination of the power of a court to recommend deportation in the case of an alien found wandering without ostensible means of subsistence. But there is no obvious reason for omitting the power to make a similar recommendation where the alien " has been sentenced in a foreign country for an extradition crime."

Team Policing

(*Concluded from p.* 178)

By A. J. PATERSON, B.E.M., M.A., B.L.
Chief Constable of Salford

Daily Work

It is, I feel sure, generally agreed that police problems must differ according to the periods of the day. In Salford it is considered that there are at least three distinct phases for which different operational methods are required. These are—

(1) 7.0 a.m. to 6.0 p.m.
(2) 6.0 p.m. to 2.0 a.m.
(3) 2.0 a.m. to 7.0 a.m.

The demarcation of these phases cannot always be clearly defined or anticipated, and the phases themselves are subject to alteration by public holidays, school holidays, weather conditions, and other circumstances. But irrespective of the phase or part phase, the flexibility of the team system of policing permits the easy handling of all situations as the following explanation of the operational technique used in each phase may show:—

(1) *First Phase—7.0 a.m. to 6.0. p.m.*

Between these hours the industrial character of the City asserts itself and normally from Monday to midday Saturday, traffic flow is at its heaviest, factories, shops and other business premises are fully staffed, and housewives are engaged on their household tasks. In short, property is being protected by the general public and the thief's chances of helping himself are considerably reduced since he runs the possible risk of immediate detection and detention by the owner of the property or his servants. Accordingly, apart perhaps from an infrequent smash-and-grab raid, an occasional theft of a pedal cycle, or sneak-in theft from premises during the temporary absence of the occupier, and a certain amount of seasonal drunkenness relatively little serious crime is likely to occur in the sergeant's district during this period. Consequently, the sergeant will normally deploy his men so as to ensure that each fixed traffic point and dangerous school-crossing is manned and that special attention is given to those streets or areas where traffic congestion or obstruction by parked vehicles, is likely to occur. At weekends and during school-holiday periods, attention must be given to those places where, from his experience, he knows that children are wont to vent their destructive energies or where their lives may be endangered, *e.g.*, canal banks and railway lines and sidings. Except during Saturday and Sunday afternoons, residential districts will not require a very heavy degree of policing for most of the year unless, of course, criminal activity is taking place therein. Perhaps it would be advisable at this stage to summarise the normal distribution and duties of personnel during this phase, *viz.*—

Monday to Friday	Distribution and Duties
7 a.m. to 4 p.m.	1. Fixed traffic points and dangerous school-crossings.
	2. Dealing with traffic congestion and obstruction, and mass movement of persons at 'bus termini and focal boarding points.
	3. Main road patrols.
	4. Car crew routed to give supervision to valuable property, etc., and to attend to emergencies.
4 p.m. to 6 p.m.	5. Duties 1, 2 and 3 continued as above, with school-crossing duties terminating at 4.30 p.m.
	6. Deployment of personnel to cover activities of children released from school.
	7. Duties of car crew adjusted to include duties 4 and 6 above.
Saturday	
7 a.m. to 1 p.m.	8. Duties 1–7 inclusive, except that duties at school-crossings are replaced by duties outside cinemas where matinees are held.

SATURDAY

1 p.m. to 6 p.m. 9. Duties 3, 4 and 6, deployment of personnel to both business and residential areas and crowd and traffic control at football matches, etc.

SUNDAY

7 a.m. to 6 p.m. 10. Same as for Saturday, 1.0 p.m. to 6.0 p.m. except for attendance at football matches, etc.

Obviously the foregoing distribution is subject to any change in phase or conditions which may completely alter the character and policing responsibility of any particular district at any time. For example, on public holidays the volume of vehicular traffic is likely to be considerably less, but, on the other hand, most business premises are vacated and consequently extra attention to lock-up property is required. During school holidays the deployment of personnel must take into account the additional supervision needed of areas frequented by children, a factor which does not merit the same consideration during school hours. Even inclement weather conditions play a part by keeping children indoors or by keeping shoppers away from market places and shopping centres, or by limiting attendance at outdoor events, thereby easing policing problems to allow, if necessary the diversion of personnel to other areas. Sufficient has probably been written to indicate that flexibility in deploying resources is one of the essential requirements of operational efficiency. Under the team system of policing there is no arbitrary division of areas as in the beat system, and consequently there is no difficulty in deploying resources according to the needs of the moment. Moreover, reference back to the normal distribution set out on the preceding pages will show that for most days of the year the duties of the police, although exacting, tend to follow routine much more during this phase than between the hours of 6.0 p.m. and 2.0 a.m. The danger of boredom and monotony inherent in the beat system is overcome under the team system by intelligent handling of personnel and by a judicious and periodic interchange of duties. The sharing of duties, is, therefore, more equitable with a consequent quickening and maintenance of interest and greater opportunities for the display of initiative.

Since the volume of traffic is normally at its heaviest during this period, it is manifest that the risk of street accidents is ever present. Obviously, it is essential that there should be a speedy arrival at the scene of any accident not only to save life but also to remove any obstruction caused by the vehicles involved, or by the crowd inevitably drawn to the scene, and to establish a proper measure of control. The sergeant, if not present in the car, is quickly informed of any incident of importance; he can then see it at first hand and decide whether to leave it to the attention of the members of his team already on the scene, or take charge himself should the circumstances warrant. The speedy arrival permits a quick appreciation of the situation and immediate decisions can be taken which may eliminate much useless labour. Witnesses can be interviewed and, if necessary, their statements obtained on the spot, thereby obviating the need for them to be interviewed at some other time or by police officers in other police areas. In the case of major incidents the car can be used as a control point or temporary police office, and Divisional Headquarters kept informed of the size, nature and other details of the occurrence. If a car becomes, or is likely to become, so engaged over a lengthy period, effective cover can be given to the sub-division concerned, (a) by obtaining another car, or (b) by the car on the neighbouring sub-division taking appropriate action.

(2) *Second Phase*—6.0 *p.m. to* 2.0 *a.m.*

During this period the weight of traffic falls considerably, shops and other business premises close for the night and most people are free from work. Social activity reaches its peak and many persons temporarily leave their homes perhaps to go to the pictures or to visit the "local." No longer are business premises and residential property being indirectly protected by the presence of the public, and therefore the thief is presented with greater opportunities to pursue his nefarious activities. The police are thus confronted with an entirely different set of circumstances than those obtaining in the preceding phase. It will be apparent that the division of the City into beats, however meticulously planned, is too absolute and rigid to provide a satisfactory answer to the different problems to be faced in this phase. Indeed, since every aspect of practical police work is likely to be encountered during this period, the methods of deploying personnel appertaining under the team system of 7.0 a.m. to 6.0 p.m. would be equally unavailing. A different technique must therefore be employed.

Since darkness is a powerful ally to the criminally minded, the danger of " breaking and entering " offences is more acute between October and April than during the other months of the year. The same general rule may be said to apply—admittedly with less certainty—to crimes of violence against the person and to rowdyism and drunkenness. With the lengthening of the daylight hours the danger is somewhat reduced although not altogether eliminated.

Although in this phase (6.0 p.m. to 2.0 a.m.) many other important duties fall upon the police, the main preventive duty is the examination of lock-up property. Under the team system of policing this property is examined as and when directed, and this enables a tactical plan and better " attacking " measures to be launched against potential criminals. Unfortunately, space is too limited to illustrate by diagrams and explanation the ingenious methods and tactical plans used in the close examination of property, but the element of surprise is the underlying principle in each method and as the constable himself is unaware of the sequence in which areas will be " worked " observation of his movements would prove of little value to the wrong-doer. The sergeant is not restricted in any way in the splitting up of his district and since there are no prescribed beats he is not hampered by the fear of leaving any particular area or areas uncovered for a period. The disposition of his personnel—whether on separate or overlapping areas or in any other way—is governed only by common sense and a realistic view of the needs of the moment.

Third Phase—2.0 a.m. to 7.0 a.m.

Normally, most citizens are in bed during these hours, but the danger of " breaking and entering " offences still remains. Accordingly, the examination of property, with special checks on vulnerable premises, is the main duty during this phase.

Normally, all lock-up property in Salford is examined by 11.0 p.m. and some of it has been seen more than once before that time. As a result of their intimate operational knowledge and constant contact with the men, the sergeants on the 4.0 p.m. to midnight relief are able to put the sergeants taking duty on the night relief properly into the picture as to what has been accomplished. The night relief sergeants are thus in a position to base their plans with some regard to the tactics employed on the previous relief.

As the present manpower shortage affects the night relief more than any other, the sergeant on that relief has not the men available to make an intensive or systematic examination of all the lock-up property in his section. However limited his resources may be, he is nevertheless able to use them economically and with the best possible effect. The variety of his operations need only be limited by his own imagination or ingenuity and men may be moved singly or as part of a team from area to area as the occasion demands or his intuition dictates. As already explained, he is not hampered by the fear of leaving any particular area uncovered for a period since his mobility enables the furthermost points in his section to be reached in a matter of minutes.

Recording of Duties, Incidents, etc.

It is obviously essential that a complete and detailed record should be maintained of the areas worked, the time they were worked, and by whom they were worked. It is equally important that the sergeant should not be fettered with the responsibility for the submission of such records if he is to be kept free to fulfil his proper role during the whole of his tour of duty.

The Operational State used in this Force is completed by the telephone operator at each Divisional Headquarters and on it is recorded (a) the movement of all personnel; (b) the areas they have worked, either mobile or on foot, including the time employed and whether the personnel were working together or singly; (c) the incidents that have occurred, who attended to them and the time engaged. In fact everything necessary to provide a complete picture of the working of the Division throughout the twenty-four-hour period is inserted. This sheet is also the " Parade State " which, after being checked by the Inspector and examined by the Superintendent, is filed as the " Duty Record."

As all deployments and transfers of personnel are immediately recorded on the Operational State, the senior officer on duty has always before him a complete and almost up-to-the-minute picture of all the movements of personnel in his Division and the attention which is being given to reported incidents. As the information is transmitted to his Headquarters so the work " picture " unfolds before his eyes and remedial measures can be quickly instituted if necessary. Thus, any danger of too much fluidity entering into the plan of operations can be quickly and effectively countered.

The entries on the Operational State cover the twenty-four hours and provided the simple fundamentals are observed, the " State " is easy to read. It is labour saving and can be adapted to suit requirements.

The Effect of the System

Comparison of the criminal statistics covering the past ten years clearly demonstrates that the uniformed constable in the Salford Force is now making a far greater contribution towards the detection of crime than ever before. Without doubt the team system of policing is mainly responsible for the increased efficiency and improvement which cannot be accurately assessed by the mere presentation of figures. When it is pointed out that for the past five years this Force has been almost consistently 15 per cent. below authorised establishment, that the actual duty hours have been considerably reduced by increased training and that postwar recruits now form the major part of the strength available for preventive duties, the comparative figures have an even deeper significance. Whatever conclusions may be drawn I think it can be safely asserted that the results would have been even better had the Force not been so far under strength. I am aware that it can be postulated that the improvement may not be maintained. That may be true; what the future holds is beyond our ken, but there does not seem to be any apparent reason why the results achieved over the past five years should not be maintained, and perhaps improved upon, for an indefinite period. Added experience, especially in the case of the younger constables, and more manpower are factors which should weigh heavily in favour of consistency at least.

Efficiency and service to the public must naturally take first place in any system of policing, but due consideration must also be given to working conditions. No man-made scheme can function by itself; any measure of success which may be achieved is mainly due to the keenness, interest and goodwill of the operating personnel. In effect, no scheme can function properly unless it helps to accelerate the gathering of experience by the operatives, encourages them to think and to use their intelligence and initiative, adds variety to the daily grind, and tends to create interest and zeal. While it is believed that the team system meets such criteria and thereby prevents " his beat work from deteriorating into the passivity and boredom which in the past have characterised the work of too many constables" (Second Report, Police Post-War Committee) it is not claimed to be a panacea for all the minor troubles which may affect the police service from time to time. But the principles of the system, once assimilated, evoke such a strong desire "not to let the side down" that difficulties are quickly mastered.

Points to Remember

It is realised that the team system of policing, in common with all other systems, requires care and attention to prevent the obtrusion of unimaginative routine. For this reason, therefore, I append the following hints which, though self-evident, are sometimes overlooked by senior police officers.

1. Habit is strong in mankind, and most persons resent any imposed change in conditions to which they have been long accustomed. It is natural for them to regard methods to which they are habituated to be efficient and as good as, if not better than, any other. Any change is almost bound to be met with suspicion, if not scepticism, and therefore, these reactions must be taken fully into account otherwise the successful application of the system may be unduly delayed if not actually aborted. Not only should the *methods* of working be clearly and painstakingly explained, but care should be taken to ensure that all personnel are fully conversant with the *principles* on which the system is based. A sound theoretical knowledge of the system before it is put into operation helps to create confidence—an essential requirement in the performance of any duty—and to induce a quicker appreciation of the benefits which accrue from concerted team-work.

2. There should be no early expectation of outstanding results nor disappointment at set-backs or difficulties which may be experienced during the first few months following the introduction of the system.

Although the principles of the system are easy to understand, it is not always a simple matter to put them into practical effect. Hitherto, a sergeant was not concerned with operational technique; beats were fixed, and his principal duty was to supervise and guide the men assigned to these beats. Now, under the team system, the sergeant not only retains his former duties, but he is also charged with the responsibility of deciding where the men can be best employed, of ensuring an equitable sharing and interchange of duties, and of inculcating team spirit. Far more mental effort is now demanded of the sergeant and not unexpectedly he may take some little time to get accustomed to his additional responsibilities.

Likely errors during the initial stages include the tendency to make operations too fluid; unnecessary movement of personnel from area to area; failing to give detailed and specific instructions when assigning areas; and demanding too much effort from his team. These are but teething troubles which patience and understanding soon help to overcome. As soon as the sergeant gains confidence and masters the operational technique the system will gain momentum and begin to show its worth.

3. Each man must be made to feel that his work forms an essential and integral part of the system; his innate sense of fair play will invariably respond to the realisation that the work of his team could be adversely affected by his own actions. The advantages which accrue are obvious, the growth of a self-imposed discipline and the ready exchange of information being not the least important.

4. The team system of policing provides ample opportunities for men to show their worth and every encouragement should be given to individuality and to the use of unorthodox methods, provided they are based on common sense. Suggestions for improving any aspect of operational technique should be welcomed.

5. At all stages of the system, it is important to eliminate fixed or arbitrary boundaries within the sergeant's district which should merely be regarded as a large " beat " in which the sergeant has discretionary powers of moving his forces to counteract crime.

6. No man, including the sergeant, must be allowed to become a permanent member of the car crew, and the sergeant should encourage his men to take initiative and responsibility at incidents.

7. Finally, there must be no deviation from—

Flexibility
Mobility
Originality
Service to the Public
Speed in Action
Surprise.

Turning a Blind Eye

By Christopher Williams, *Barrister-at-Law*

It is a little disturbing to find so august a journal as *The Times* falling into the common error of urging the police to turn a blind eye on certain forms of gambling forbidden by the law, on the grounds that the law is confused and difficult to understand. In the issue of Saturday, March 13, 1954, a leading article admits that the Betting and Lotteries Act, 1934, " reflects . . . the divided mind of Britain on this highly controversial subject." It goes on to speak of the " already too active measures of the police to see that, in every local instance, the letter of this complicated law is observed."

But let us consider the policeman's position in society. He is, in the first place, an independent officer of the Crown, whether he is the humble constable on the beat or the Chief Constable of the largest force in the country. He is the servant neither of his Police Authority nor of his superior officer. It is his clear duty to prevent crime and to maintain the Queen's peace. Whatever meaning one attaches to the word " crime," and whatever may constitute a breach of the peace, together they must surely comprise the whole body of laws, breaches of which involve a penalty to be imposed in the criminal courts. It is the policeman's duty, therefore, to enforce them all.

And so to demand that he should exercise some sort of discretion, and refrain from enforcing certain laws is neither fair nor correct. In the first place, it demands of him a judgment and a sense of responsibility which is scarcely reflected in our treatment of him when we fix his salary in relation to that of other public officers. But, more important, such a process must inevitably subject all police activity to the personal likes and dislikes of individual policemen.

Such a subjective attitude on the part of the police, indeed, has endless possibilities of partiality and discrimination. But it also carries with it a still more serious implication. For the police to ignore breaches of a particular law, for whatever reason, is to offer a licence to sections of the community to violate those laws at will. Further, it is to demand that the rest of the community ignore the breaches also. As Senator

Kefauver pointed out in *Crime in America*, if good citizens of a community shut their eyes to wholesale violation of a law—even if it is a law prohibiting something that a lot of people happen to like—then law enforcement and honesty in public office will " go to hell in a handcart." If public servants such as the police are to choose which laws to enforce and which to ignore, then naturally the public will make such a choice too.

Nor is it really relevant to point out that the police in this country do already exercise some degree of discrimination in the enforcement of the law. Many traffic offenders, for example, receive a word of advice on the spot instead of a summons. That speaks merely for the good sense of the police, and for our good fortune in being served by sensible officers. The point is that these are exceptions to the general rule, and are made under strictly controlled conditions, for a particular purpose; there is no question of any general suspension of the traffic laws in favour of any section of the community.

But any extension of this practice would surely be dangerous. For one thing, it would make it increasingly difficult for the senior officer to be sure that his subordinate was doing his duty conscientiously. In America, Kefauver tells us, many police officers exercised such a discretion under the influence of bribery. In this country, happily, such an influence is rare; but who can say how common it would become if all policemen were to be allowed to select the laws to enforce and the laws to ignore?

Of course, it is easy to say, whatever the police are doing, that they had better do something else. But the policeman's task is prescribed in the common law and the Statute-book. If we think the police are wasting their time in a particular activity, then we should say so in Parliament. But if we say from the driving seat of our car, " Why don't you catch some of these thieves? "; or if we thunder in the columns of *The Times*, " The police in these days have more urgent things to do," we are merely passing our responsibility on to where it does not belong. If we think the police have no business to enforce the betting laws, then we should change the betting laws. It is one thing to appreciate a sensible attitude on the part of the police towards what may be called " minor " or " technical " traffic offences; but it is quite another thing for a reputable newspaper to urge a selective enforcement of the law as a matter of technique, to mitigate the unsatisfactory laws.

For who is to exercise the discretion? Apparently the senior officers. Are they then to proceed against A in respect of his sweepstake, but not against B in respect of his lottery, on the grounds (suggested by *The Times*) that the object for which B is raising money is a good object? Surely such a choice would depend on the police officer's view as to what is a good object and what is not. And what is A to do? Perhaps he should move to another district, whose chief officer's opinion of what is a good object coincides with his own; for there he may run his sweepstake without interference.

Or does *The Times* suggest that the discretion of the police be exercised centrally, at the instance, say, of the Home Secretary? In the first place, such a plan would not necessarily work, for neither the Home Secretary nor any other Minister has any powers of compulsion over the operational work of the police, and a chief officer who disagreed with the Minister might still enforce a law against the latter's wishes.

But apart from that, is such an attitude correct? Are the police entitled, either on their own initiative or on someone else's, to select which laws they are going to enforce and which to ignore? Surely not, for it would clearly be unconstitutional. For what becomes of the sovereignty of Parliament, if, between the legislature and the subject, we interpose an agency, over whose activities no control exists, other than that provided by the courts, and which claims a suspensory power over the laws?

Undoubtedly the only safe thing is for the police to do their duty and enforce the law. The more they enforce a stupid law, the quicker will its stupidity be realised and relieved. *The Times*, therefore, would do better to urge the reform of bad laws than their neglect. It would be quite improper to encourage the police to apply their own criteria in selecting the laws they are going to enforce; and equally improper for any Minister to claim the right to make such a selection for them. Each of these alternatives amounts to a claim to suspend the law of the land in favour of one section of the community against the interests of the rest. What of the Bill of Rights? For such a claim cost King James II his crown.

An Australian Letter

Melbourne,
January, 1954

The Master of the Rolls, Sir Raymond Evershed, visited Australia in 1951 as a guest of the Commonwealth to attend our Jubilee celebrations. During this outstandingly successful visit, he several times and in public affirmed that the English profession would do well to devote more attention to decisions of senior Australian courts. In no area of law is this more true than in criminal law, for there is in Australia almost a laboratory for the comparative study of the operation of the criminal law, with relatively homogeneous populations, and minor but significant variations in the law. The defect, however, is that the data this laboratory produces are largely ignored.

There are in Australia eight criminal law jurisdictions. The six states differ in the precise terms of their criminal law but divide clearly into two groups, the common law states—New South Wales, Victoria and South Australia—and those states which have codified their criminal law—Queensland, Western Australia and Tasmania. There is also the jurisdiction covering the Northern Territory, presided over by a Federal judge, at present Mr. Justice Kriewaldt, the "Jungle Judge" as he is affectionately known, who not infrequently carries with him the Royal Mail as well as the law. Finally, there is the Federal criminal law, providing criminal sanctions for breaches of those statutes which are within the constitutional competence of the Federal Parliament, designed to protect the activities of the Commonwealth. The High Court of Australia, as well as possessing a limited original jurisdiction, has certain appellate functions from the Supreme Courts of each state, which themselves possess plenary jurisdiction within each state.

Of the many decisions of Australian courts during 1953 which may be of interest to the English criminal lawyer only a few can be mentioned in this first letter.

Similar Facts and "Thalrat"

The New South Wales courts have recently experienced almost an epidemic of cases involving thallium poisoning.

Thallium is a lethal poison with most unpleasant side-effects. Since 1929 it has been sold throughout New South Wales in the form of a liquid rat poison under the trade name of "Thalrat." In this form it is tasteless, odourless and colourless—a most efficient homicidal drug.

"Thalrat" when ingested is distributed generally throughout the body by the blood stream, only the bony structures being immune. It affects the nervous system, producing physical and mental degeneration. It slowly paralyses the limbs, particularly the legs, causes the hair to fall out, induces acute depression, and generally reduces the victim to what one expert witness described as a "protoplasmic mass."

In *R.* v. *Fletcher* ((1953) 53 State Reports, N.S.W. 70) the New South Wales Court of Criminal Appeal (Street C.J., Owen and Herron JJ.) heard an appeal by Mrs. Fletcher against her conviction for the murder of her husband. Mrs. Fletcher's husband died only four months after their marriage. A month before his death she had sought the aid of the Public Solicitor to eject her husband from her home. The Public Solicitor was not really co-operative. Then Mr. Fletcher was taken to hospital "nervous and crying" with a feeling of numbness in his legs. The next day he was discharged. Three days later he was readmitted vomiting, paralysed in the legs, his hair falling out, and suffering acute pain—the condition still not diagnosed. Eleven days later he died. The post-mortem examination revealed half a grain of thallium to be in his body.

Mrs. Fletcher had mentioned to the Public Solicitor that her husband had threatened to "make himself sick and get her into trouble." This was the line of defence to which she adhered throughout the trial; its inherent unlikelihood was intensified by Mrs. Fletcher's previous marital imbroglio.

In 1943 the accused had married a Mr. Butler. In 1947 Butler developed "pins and needles" in his toes, and a gradual loss of the use of his legs; he took to his bed. The doctors refused treatment, holding his symptoms to be assumed or hysterical. His condition deteriorated. His hair began to fall out, he could move only by propelling himself with his arms—again attempts to secure treatment failed. Finally his acute depression secured his admission to a mental hospital. Under psychiatric care, separated from his wife, he recovered sufficiently to be transferred to a general hospital. A week after his return home, Butler died. Tests for arsenical and lead poisoning proving negative, the death was certified to be due to natural causes.

After Fletcher's death, the body of Butler was exhumed and a substantial quantity of thallium found in the body and in the lining of the coffin. The issue before the appeal court was the admissibility of evidence concerning the Butler episode in the trial of Mrs. Fletcher for murdering her second husband.

The court had little difficulty in concluding that this evidence was not excluded by the principles enunciated by the Privy Council in *Noor Mohamed's* case ([1949] A.C. 182), and in doing so pointed out that " the full picture disclosed by the evidence does not appear with complete clarity in that case as reported in the Law Reports " but could be obtained from the appeal book which the New South Wales court had the opportunity of reading.

In many ways the judgment in *R.* v. *Fletcher* follows the pattern of that of the English Court of Criminal Appeal in *R.* v. *Straffen* ([1952] 2 Q.B. 911; 36 Cr.App.R. 132), but it is of value in drawing one line between two conflicting and well-established principles of evidence—first, evidence of prior criminal conduct by the accused must not be adduced for the purpose of showing a criminous propensity; secondly, the mere fact that the evidence reveals prior criminal conduct by the accused does not render it inadmissible if it is relevant to an issue properly before the jury, for example, to rebut a defence otherwise available or to establish that the alleged crime was not a mere accident.

On the facts either Mr. or Mrs. Fletcher administered the " Thalrat." Mrs. Fletcher said he took it either to spite her or by accident and that her previous spouse had done likewise. The relevance and admissibility of evidence of the first death thus fell clearly within the second of the above principles.

Madness and Morality

The High Court of Australia has firmly refused to follow the current English interpretation of the McNaghten Rules. These rules are applied in New South Wales, Victoria and South Australia, and the three states which codified their criminal law built around them their statutory provisions concerning the defence of insanity.

In *Stapleton* v. *The Queen* ((1952) 86 Commonwealth Law Reports 358) the High Court dealt at length with its reasons for refusing to follow the English Court of Criminal Appeal in *Windle's* case ([1952] 2 Q.B. 826; 36 Cr.App.R. 85) in which Lord Goddard C.J., giving the judgment of the court, vehemently declared that if the accused knew the nature and quality of his act and knew that it was against the law he cannot be heard to say that he did not know that it was "wrong," and will be denied the defence of insanity. The High Court, and consequently all Australian courts, will allow this defence to succeed if it is established on behalf of the accused that he "could not reason about the matter with a moderate degree of sense and composure." They affirmed that morality and not legality was the concept in the minds of the judges whose opinion was sought in 1843 by the House of Lords. Generally, if the accused knew that his act was contrary to the law he would also know that it was morally wrong; but this is by no means always so.

Stapleton's case came on appeal from the South Australian Supreme Court, where a direction on the defence of insanity had been given in accordance with the interpretation of the word "wrong" accepted in *Windle's* case. Arrangements had been made for Stapleton's hanging, the date fixed, and, presumably, the hangman hired. Leave to appeal to the High Court was granted. The High Court allowed the appeal and ordered a retrial. Stapleton was subsequently found "not guilty on the grounds of insanity," which is the form in which this verdict is given in Australia.

The High Court does not lightly differ from the English Court of Criminal Appeal, having the strongest desire to ensure that the common law in Australia shall grow in conformity with its development and interpretation in England. On this issue, however, it is clear from the deeply considered, technically precise, and exhaustive joint judgment of Dixon C.J., Webb and Kitto JJ. in *Stapleton's* case that they feel keenly and confidently the error of the English interpretation. Nor is it a mere academic quibble—lives will depend upon it; Stapleton's certainly did.

This Australian view of the McNaghten Rules is that accepted in the United States of America and the distinguished judgment of Cardozo J. in *People* v. *Schmidt* ((1915) 216 N.Y. 324) is a powerfully persuasive precedent.

The issue is too large to canvass now. It is discussed in an article in the October, 1953, number of the *Modern Law Review* (Vol. 16, p. 435). It would seem, however, that if the McNaghten Rules are to be read in the light of the case-law of 1843, and not as novel pronouncements of a legislative character, then the judgment of the High Court in *Stapleton's* case is a clear and convincing refutation of the English Court of Criminal Appeal's decision in *Windle's* case.

Evidence of Accused's Bad Character

Before a Victorian Court of General Sessions one Coman, charged with offences involving explosives, appeared in his own defence. He called two witnesses who, during their examination-in-chief, revealed that Coman had previously been involved in criminal offences. The learned chairman came to the conclusion that these answers were given deliberately and at the instigation of Coman in order to secure a discharge of the jury. He decided, therefore, not to discharge the jury. He did, however, warn them to put from their minds this information concerning the accused's bad character.

On appeal, the Full Court of the Supreme Court (Herring C.J., Martin and Smith JJ.) (1953 Victorian Law Reports 581) held that there is no rule of law that a jury in a criminal trial must be discharged if evidence of the accused's bad character is given, even if not in issue—it is a matter within the discretion of the trial judge taking into account all the circumstances of the case. The Chief Justice concluded: "I think it most undesirable that people who find themselves in the position of this accused man should imagine that they can, by disclosing their bad character, immediately obtain a discharge of the jury."

Exclusion of Prisoner from Court

It fell to Sir Charles Lowe, then Acting-Chief Justice, to try one Vernell. Before Vernell was asked to plead to the six counts against him, his counsel, explaining that he was briefed for this issue only, submitted that the accused was unfit to plead. A jury was empanelled to determine this issue. The trial judge ruled that the onus of proving unfitness to plead rested on the accused. Vernell was found of sound mind and able to plead. During much of the time this issue was being tried Vernell was not in court—such was the noise he made and the violence of the disturbances he created that it was found impracticable to proceed and he was removed.

When the time came for the actual trial to commence, Vernell was permitted to take his seat in the dock. Almost immediately he vaulted over the front of the dock and rushed towards the door. He was forcibly returned to his seat. For a few minutes he comported himself reasonably, pleading not guilty to each count and quietly allowing three jurors to be empanelled. Then pandemonium: shouting, screaming, struggling with the warders, kicking on the front wall of the dock.

Sir Charles Lowe patiently explained to Vernell that he would be removed from the court if he persisted in this behaviour and that his trial would continue even though he was not in court and persisted in refusing the aid of defence counsel which the court was prepared to assign to him. The deafening noise continued. Twice Vernell was removed from court, twice brought back. At the conclusion of the case for the prosecution he refused to say or do anything. He remained quiet during the summing up. The jury found him guilty on all counts. Lowe A.-C.J. deferred passing sentence in order to enable Vernell to appeal as to the validity of his conviction.

The Full Court (Martin, O'Bryan and Smith JJ.) (1953 Victorian Law Reports 590) held that, although there were few recorded cases of the accused's exclusion from his trial and none in England or Australia since *R.* v. *Mary Browne* ((1906) 70 J.P. 472), there is no unqualified right of one charged with a felony to be present or represented in court throughout his trial. The apparently contradictory authority of the English Court of Criminal Appeal in *R.* v. *Hales* ([1924] 1 K.B. 602; 17 Cr.App.R. 193) is best regarded as absolutely requiring the prisoner's presence in court only during sentence. Otherwise he may be removed if two conditions are fulfilled: (a) his conduct is intended to make the trial impossible (if it is not so intended but has this effect he will be unfit to plead); and (b) if his conduct does in fact make trial impossible. The latter condition can, of course, never apply to the actual imposition of the sentence.

The Full Court had no doubt that Vernell fulfilled both these conditions and that the trial judge was well justified in ordering him to be removed and proceeding with the trial in his absence.

Perhaps the most remarkable aspect of this case was Sir Charles Lowe's self-control and consistent courtesy in a setting more resembling a bar-room brawl than a trial in a court of law.

The Gentlemanly Rape

In *R.* v. *Nisbett* (1953 Victorian Law Reports 298) the Full Court of the Victorian Supreme Court (Lowe A.-C.J., Martin and Smith JJ.) held, without reserving judgment, that there is not necessarily any element of indecency in an assault with intent to rape.

This somewhat surprising result arose from the trial judge's direction to the jury that it was open to them to find a verdict of indecent assault upon a presentment of assault with intent to rape. The jury found accordingly. For this alternative verdict there was no statutory authority.

On appeal the accused successfully challenged the trial judge's direction that this alternative verdict was available on such a presentment under the common law principle, precisely stated by Chief Baron Kelly in *R.* v. *Taylor* ((1869) 1 C.C.R. 194) that " on an indictment for a misdemeanour, the jury may find the prisoner guilty of any lesser misdemeanour that is necessarily included in the offence as charged." There was ample evidence of indecent conduct by the accused Nisbett; but, in that it is just possible to envisage a most gentlemanly male committing an assault with intent to have carnal knowledge without performing any overt acts of indecency, the jury's verdict was quashed.

This gay little point of law did not greatly comfort Nisbett, a conviction being substituted for the only necessary element of the original charge clearly established by the jury's decision—common assault—and the same twelve months' sentence imposed for it as the trial judge had fixed for the indecent assault.

NORVAL MORRIS.

A Day in a Police Court

Magistrates' Clerk

The series of which this is the fourth instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

" Charges Up "

When the public had been admitted the warrant officer crossed the courtroom to the door labelled " Prisoners " and his voice could be heard calling to Sergeant Chumbleton, "Charges up, Joe." The gaoler already had the first few defendants, together with the police officers who had arrested them, waiting in a small "assembly room" opposite the door. This little reservoir, replenished at intervals from the cells and detention room, maintained a steady flow of work for the magistrate and obviated any hiatus between cases.

The morning list began with fresh charges and ended with remands from a previous sitting. In each category Sergeant Chumbleton had numbered and entered the cases in a rough order of precedence according to the gravity of the offence. This was all that could be planned in advance to clear off the shorter cases before the longer ones were tried. Like all other guesses at the future it was not infallible. However, it was a pretty safe bet that at any rate the first charge today would be a plea of guilty.

The Drunks

"Come along, Sally," said P.C. Mure, the assistant gaoler, crooking a beckoning finger. A shabby little elderly woman stepped forward from the assembly room and he put his hand on her arm.

"All right, I know me way," she said. But Mure's hand remained on her arm as a symbol of custody.

"Charge No. 1, Sarah Clinton, your worship," he announced ushering her into the dock. The constable who had been with her outside hurried round behind the dock and up into the witness box.

The clerk turned his head while still writing her name in his minute book and said, referring to the first of the pile of charge sheets on his table, "You are charged with being drunk in the street last night. Do you plead guilty or not guilty?"

"Yes, guilty. I'm sorry, sir," said Sarah.

"Any trouble, officer?" Frell asked the constable.

"No, your worship. Helplessly drunk," was the reply, addressed, as the constable had been taught, to the magistrate.

Mr. Sutterthwick did not ask the assistant gaoler the usual question: "Any previous convictions?" He said instead "When was she here last?" He had not a good memory for the daily procession in the dock but he could not help recognising Sarah Clinton.

"Three weeks ago, your worship," said Mure. "Fined 7s. 6d. for being drunk."

"How many in the last twelve months?" inquired the magistrate.

"Nine, your worship," replied Mure, consulting the list that was prepared each morning from the gaoler's books in the case of persons charged with minor offences not recorded in the police register of crimes. "168 in the last fifteen years," he added, almost proudly.

"Do you admit that you've been twice previously fined for drunkenness during the last twelve months?" asked Frell to tidy up the legal position with a formal admission of the facts which rendered the defendant liable to the maximum fine of 40s.

"Yes, I do, sir," was the reply. "And I regret it."

"Getting a bit too often, isn't it, Mrs. Clinton?" remarked Mr. Sutterthwick. "What have you to say for yourself?"

"I'm awfully sorry, sir. I know you were very lenient to me last time. And I did try hard to be a good girl. But I lost my key last night and I knew the gentleman I'm living with wasn't going to be in till late so I went in the pub. I couldn't walk about all night at my age, could I? And it doesn't take much drink to upset me now, sir."

"I think you told me a better story than that last time," said Mr. Sutterthwick with a smile.

"Yes, I know, sir," said Sarah apologetically. "But I do my best and I promise you I won't come here again. I've learned my lesson. Really I have. I'm 66 and I've got to take care of myself now."

"Well, if this goes on I shall have to ask you to find sureties and you know what that means," said the magistrate with unconvincing sternness. Sarah Clinton did know. More than once in her career she had done her two months in default of finding a surety for her good behaviour.

"Very well; it'll be 10s. this time," announced the magistrate. "You'd better not come again for a long while," he added.

"Thank you, sir. No, I won't. I promise you that. I mean it this time. I'm not bad really. I do try. Can I have time to pay, sir?"

"Are you in work?"

"Oh yes, sir. I've got a regular job. I do a bit of cleaning. I ought to be at work this morning. I can pay at the end of the week, sir."

"She always pays her fines, your worship," volunteered Mure. He knew that there would probably be a whip round for the fine at one or other of Sarah's "locals."

"Seven days to pay," said the magistrate.

"Oh, thank you, sir. Good morning, sir. I won't let you down," was Sarah's farewell speech before she turned to make a careful descent of the dock steps.

"Ten bob. Week to pay," said Mure, handing her over to Sergeant Chumbleton outside and turning to the assembly room for the next case.

"Your boss is a gentleman," confided Sarah to the sergeant. "Me and him understand one another."

Charge No. 2 was John Hunter, an insurance agent, fifty-two years of age, who had been taken out by a client the previous night to celebrate the maturing of an endowment policy. Barely audibly he pleaded guilty.

"No trouble, your worship," said the constable, anticipating the question. "I found him staggering about the roadway in the path of the traffic and had to take him into custody for his own safety."

"Anything to say?" said the magistrate, after Mure had answered "Nothing known, your worship," to the customary question.

"No sir," replied John Hunter in a low voice and then added "Could this be kept out of the papers, please? It might affect my position."

"I'm afraid I've no power to tell the press not to publish it. But I don't imagine the case will interest the newspapers very much," said Mr. Sutterthwick.

John Hunter had nothing more to say and Mr. Sutterthwick had only "Pay 5s. please" to add.

The prisoner paid his money to Sergeant Chumbleton and left the building with a haunting fear that he had not heard the last of the case. It had taken barely half a minute to complete, and occupied one line in the register and the court cashbook, and that was all there was to it so far as the court was concerned.

Outraging public decency

The next defendants were announced by Mure as Anthony Phillips and Sylvia Wood. There were two charges against them—one of outraging public decency contrary to common law, and the other of behaving indecently together in a public place contrary to a borough council by-law which carried a maximum penalty of £5. The first charge, as the clerk knew, was put on the sheet to justify the arrest for which there was no authority in the local by-laws.

"I suppose you proceed on the second charge and ask leave to withdraw the first," said Frell, putting the words into the constable's mouth in case the latter was not familiar with the procedure.

The officer agreed; Mr. Sutterthwick nodded and made an entry in the court register; the accused, uninterested in the technical by-play, pleaded guilty to the second charge.

Frell asked the routine "What were they doing, officer?"

"Having sexual intercourse under a tree outside a private house, your worship. It's a respectable neighbourhood and there have been a lot of complaints of this sort of thing lately."

"Was it dark?" inquired the magistrate.

"No, your worship, bright moonlight."

"Many people about?"

"I didn't see any just at that moment, your worship, but it's a street that is used a lot by foot passengers. It's a turning off the main road."

Mure knew of no previous convictions against either defendant.

"What have you to say for yourself?" demanded Mr. Sutterthwick of the man; he was standing as far away from the woman as the dock would permit. "You look a respectable chap," continued the magistrate, as no answer came, "You are down in my register as a motor driver and your age is given as thirty-two. You ought to know better than to behave in this fashion."

Anthony Phillips was frightened. For all he knew he would be sent to prison for this and then his wife was bound to hear of it. "I'm sorry, sir," he said at last, "I've never done such a thing before, but I'd had a few drinks and then I met this woman. I'd never seen her before last night. She asked me for a cigarette and then we got talking. I didn't know quite what I was doing. She suggested it and, well, I was a fool."

"That's a very old excuse," remarked Mr. Sutterthwick. He turned to the woman. "What do you wish to say about it?"

"Nothing, sir, except that I'm sorry," she murmured in a tone so low that Mure had to relay the message to the magistrate.

"You're down here as a housewife," said Mr. Sutterthwick, referring to his register. "Are you married and living with your husband?"

"Yes sir," could just be heard.

"Then I can't understand why you want to go and do this sort of thing."

Sylvia Wood said nothing. She was a plain, pale-faced young woman of twenty-eight with nothing striking about her except her earrings which were bright blue and very large. Mr. Sutterthwick couldn't quite make her out.

"This sort of thing has got to stop" he said coldly. "It's disgusting. You'll each be fined £3."

Sylvia turned to the assistant gaoler helplessly. "I haven't got the money," she whispered.

"The female prisoner's asking for time to pay, your worship," said Mure to the magistrate.

"See if you can send for it. I shall want to know more about you before I give you time to pay."

"This way please," said the assistant gaoler, and the couple filed out.

A prostitute

Mure returned with Lena Lazenby whose real name was Mary Biggs. She carried a shopping bag as she intended to pay what would be for her an unusually early visit to the nearby street market. With an air of complete indifference she admitted to being a common prostitute and having caused annoyance in the street by soliciting. The constable related how he had kept her under observation for ten minutes during which time she had stepped in front of two different men, each of whom waved her aside and hurried on "obviously annoyed." Then she had gone up to a third man and the constable had heard her say "Hallo dearie. Do you want a nice girl?" When arrested she said "Why don't you take some of the other girls for a change?" The officer had known her for three years as a common prostitute, but he was a comparative newcomer to the district.

The assistant gaoler gave details of her last three convictions adding "and many others, your worship." The magistrate put the usual "anything to say?" to her.

"No" she said curtly, looking him boldly in the eyes.

"Do you want to give up this way of living yet?" inquired Mr. Sutterthwick.

A wary look came into Lena's still rather nice eyes, and her mouth hardened. "No, thank you," she said. The old blighter could only fine her 40s.; why didn't he get on with it? She had been put on probation a long time ago when she was new to the game but Miss Garrafrey had not been able to get her a job which would pay for all the nice things she wanted.

"Well, if at any time you change your mind, come and see the probation officer. She'll always be willing to help. You're fined 40s. now."

Lena skipped down the two steps from the dock and was out through the door leading to the gaoler's quarters before Mure had time to say "This way, please." Her £2 was out of her handbag ready for Sergeant Chumbleton and she did not wait for the receipt. She had her shopping to do.

A costermonger

There succeeded her in the dock a member of a street guild as old as her own—William Jackson, costermonger. His form of street trading, also, had to be conducted discreetly. If he made himself a nuisance by causing an obstruction he too was liable to arrest and a maximum fine of 40s. And again, like Lena he could hardly help breaking the law if he was to sell his wares. He adopted the same policy in court—plead guilty and get out of the place as soon as possible. Now, with somewhat the look of a satirical terrier sizing up a mastiff, he listened to the tall sergeant giving "the facts of the case."

"I saw the defendant with a barrow about 3.20 p.m. in the High Street," said the officer. "He had a large crowd round and was selling plums. It was near a bus stop and there was obstruction to vehicular traffic as well as to pedestrians. I cautioned him and he moved off very slowly. Ten minutes later I returned and found him back in the same place with a crowd round again. I kept him under observation for three minutes during which time he remained in the same spot causing considerable obstruction. I then told him I should arrest him and he said 'You can push the bleeding barrow to the station yourself, then'."

"And did you, sergeant?" asked the magistrate.

"Another officer did," said the sergeant with dignity.

William Jackson felt he had scored a point at the time but now, after his past offences had been briefly recited, he considered it good policy to apologise. "I'm afraid I lost me temper with the sergeant, me worship," he said "I'm very sorry for wot I said, but I didn't think I was doing no harm. I'm only trying to earn an honest living. I've got a wife and four kids to keep, you know, me worship."

"You ought to have learnt by now how to conduct your business without breaking the law," said Mr. Sutterthwick. "Nobody wants to stop you earning your living, but you must realise you're not the only person who has to use the streets. You can't be allowed to make yourself a nuisance. It'll be 10s. this time."

Costermongering is not so lucrative as prostitution so the maximum penalty was not imposed even for regular customers like William Jackson.

"Can I have time to pay?" asked the barrow merchant, almost before the magistrate had finished speaking.

"This man, sir, has been given time to pay on numerous occasions and he never pays until arrested on a warrant," interposed the clerk. It was Frell's duty to see that payment of fines was duly made and he didn't see why the court staff should have unnecessary work collecting them.

"See if you can send for it," said the magistrate to the defendant.

William went out to Sergeant Chumbleton and paid him straight away from a wad of dirty notes. It had been worth trying for the chance to give the police a bit more trouble, but he accepted the defeat philosophically.

Street bookmakers

Announced as "Charge No. 7, George Seymour, your worship," yet another kind of street trader stepped into the dock. He was a cog in an illegal but popular business which meant money easily earned for him and still more easily earned for his employer. All he had to do was to stand in a little back turning off the High Street for a comparatively short time each day and take from clients shillings, half-crowns and treasury notes together with slips of paper scrawled with cautious "each ways," optimistic "wins" and dashing "any to comes." Every so often he was visited by a fellow employee whose job it was to make the round of the guvnor's pitches on a bicycle and collect the slips taken. That lessened the chances of any slips being found on George if he happened to be arrested. Arrest was, however, no easy matter for the police. Two "look-outs" stood, one at each end of the turning to warn George of the approach of anyone who, from their point of view, looked a suspicious character. On receipt of a warning George would bolt into a nearby door which was left open for the purpose by a friendly householder, and promptly slammed to as soon as George was inside. He had merely to wait until the baffled constables withdrew and then return to his stand for the receipt of slips. And if it got too hot it could always be changed.

The whole business was, in fact, a never-ending war between the police and the bookmakers, the only effect of which was, as in the case of prostitution and costermongering, to keep the business fairly furtive and unobtrusive in the streets and to expose the police to the offer of bribes. Still, for individual officers there was the pleasure of the chase and George Seymour had this time been caught by one who had ingeniously penetrated his fastness concealed in the back of a horse van.

George had a simple policy in such cases. If caught with no slips on him he pleaded not guilty and denied everything the police said; if the evidence of betting was on him he accepted the inevitable, admitted his guilt and had no more to say. The sergeant had found four slips on him so the case lasted a bare half minute. The defendant had one previous conviction for street betting; he had been fined £5 then; now it was made £15.

"You're an able-bodied man," said the magistrate. "There is no reason why you shouldn't keep to honest work. If you continue doing this sort of thing you'll end up by going inside. You know, I expect, that you can be sent to prison for a third offence. The bookmaker can pay your fines for you but he won't—and can't—go to prison for you."

George Seymour was succeeded in the dock by a fellow employee, Joseph Smithers, but the charge to which the newcomer pleaded guilty was one of wilfully obstructing a police constable in the execution of his duty.

"I had been keeping observation on a street bookmaker, your worship," said the officer to the magistrate, "and I was approaching to arrest him when the prisoner, who was standing a few yards away, suddenly shouted 'Up Charlie' and the bookmaker ran into some nearby premises. I arrested the prisoner and he said 'You're making a mistake, guv'nor. I ain't got no slips on me.'"

It was Joseph's first appearance in court, but he was not nervous. His guv'nor had told him not to worry as he could only be fined £5. His guv'nor knew that Mr. Sutterthwick would not require a "look-out" to find a surety for his good behaviour on his first conviction. So, at the conclusion of the case, a shabby broken-nosed man with a handkerchief round his neck—another worker for the same firm—left the back of the court and went round to the gaoler's office to pay the £20 required to get George Seymour and Joseph Smithers released for their morning's work.

Sergeant Chumbleton knew the broken-nosed one as the representative of Evans and Macadam, Ltd., the "turf accountants" who controlled most of the street betting pitches in the district. Out of curiosity the gaoler had once totalled up the fines they paid in a year; it came to just over £2,000.

Frell glanced at the big wall clock in the court room; the time was just past eleven o'clock. The minor charges were going well—eight in as many minutes. "We shall soon reach the remands at this rate" thought the clerk with his eye on the charge sheets still remaining on his desk. But you never know in the police court.

Practice and Procedure

Court of Criminal Appeal

Matters to be included with papers on a charge of breach of a probation order

In *R.* v. *Maber* [1954] 1 W.L.R. 501, the Court of Criminal Appeal (Lord Goddard C.J., Pilcher and Slade JJ.) refused an application for leave to appeal against a sentence of borstal training passed for breach of a probation order inasmuch as it appeared that the probation order for the breach of which the appellant was charged was not sent to the sessions. The court said that where a person is charged with breach of a probation order, the probation order together with a statement of the breach in respect of which the charge was brought should be with the papers in the case.

Assizes

Committal to, from quarter sessions and magistrates' courts

See Home Office Circulars Nos. 64/1954, and 63/1954, *post*, p. 291.

Quarter Sessions

Appeal Committee's power to deal with breach of probation on committal for sentence

Some of the consequences of the extension of jurisdiction of appeal committees by the Criminal Justice Act, 1948, are not entirely clear. Suppose that A has been placed on probation (or conditionally discharged) by county quarter sessions. He commits another offence during the currency of the order and is convicted by a summary court and committed to the same county's appeal committee for sentence under section 29. Can the appeal committee also sentence him for the original offence?

The powers of an appeal committee in such a case must be sought in the Criminal Justice Act itself. When dealing with a section 29 case it " shall have power to deal with the offender in any manner in which he could be dealt with by a court of quarter sessions before which he had just been convicted on indictment": section 29 (3) (*a*). The question is whether this power is limited to the offence for which he has been committed or whether it extends to all the consequential powers which a court of quarter sessions possesses. The narrower construction seems to be required when considering the powers of a committee when determining an appeal, for these are limited to what may be done " by their order." (Summary Jurisdiction (Appeals) Act, 1933, s. 1 (1) (vii).) There is no such limitation under section 29 of the 1948 Act. That it was the intention of the Act to give an appeal committee exactly the same powers as a recorder when dealing with a section 29 case seems clear from subsection (3) (*a*) which provides that " the appeal committee or court of quarter sessions . . . shall have power . . . etc." and from subsection (4) that references to a court of quarter sessions in any enactment relating to persons dealt with by quarter sessions shall be construed as references to an appeal committee.

The effect of all these provisions seems to be, (a) that a person committed for sentence under section 29 is, after proof of the conviction, to be treated by the sentencing court in exactly the same way as he would have been by a court of quarter sessions which had just convicted him on indictment, and (b) that when dealing with such a case an appeal committee has exactly the same powers as quarter sessions.

This, however, does not completely dispose of the difficulty. A court of quarter sessions can only deal with a breach of one of its own orders. Therefore, an appeal committee must not only be empowered to act as *a* court of quarter sessions, but as *the* court of quarter sessions which made the order. Obviously this identification is only possible, if at all, with the court which appointed it. Though the Act does not provide this in terms it is the reasonable as well as the convenient interpretation to place upon it. If this is right it follows that in similar circumstances quarter sessions can deal with a probation order made by its own appeal committee.

The powers of the committee when dealing with a sentence under section 20 of the 1948 Act will be considered in the next issue. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Committals for trial at quarter sessions and assizes

Home Office Circular No. 64/1954, dated March 5, 1954

The Lord Chief Justice has asked the Secretary of State to call the attention of courts of quarter sessions to the opinion of the judges that cases should not be remitted for trial from quarter sessions to assizes merely because they appear lengthy or present some complication, but only for some exceptional reason.

See also Circular No. 63/1954, *infra*.

Magistrates' Courts

Committal for trial at quarter sessions and assizes

Home Office Circular No. 63/1954, dated March 5, 1954

I am directed by the Secretary of State to say that the Lord Chief Justice has asked for his assistance in calling the attention of magistrates' courts and courts of quarter sessions to the present congested state of business on all the circuits. Recent legislation, particularly the Law Reform (Contributory Negligence) Act, 1945, and the provisions of the Law Reform (Personal Injuries) Act, 1948, abolishing the defence of common employment, coupled with the Legal Aid and Advice Act, 1949, has greatly increased civil business at most of the assizes, especially at those which include large urban or industrial districts. To enable the judges to deal with this increase in the number of causes set down for trial without exposing litigants to undue delay, often amounting to a denial of justice, the criminal work at assizes should as far as possible be confined to cases which are required by law to be tried at assizes.

Under section 9 (1) of the Magistrates' Courts Act, 1952, where the offence for which a person is committed for trial is triable by quarter sessions, the duty of the magistrates' court is to commit him to the next quarter sessions. If that quarter sessions is not being held within one month from the date of committal, the magistrates' court may commit him under section 10 of the Act to some other convenient quarter sessions, that is, normally, a quarter sessions for some other place which is being held at an earlier date. Under section 11 of the Act a person may be committed to assizes for the trial of an offence triable by quarter sessions if the magistrates' court is of opinion that there are circumstances which make the case an unusually grave or difficult one or that serious delay or inconvenience would be caused by committal to quarter sessions. Before the question of delay falls to be considered under section 11, the use of the convenient court procedure under section 10 should be considered. The circumstance that the trial cannot be expedited by committal to another quarter sessions under section 10 would not, however, justify committal to assizes under section 11 unless serious delay or inconvenience would otherwise be caused. In particular the fact that an assize will be held before the next quarter sessions would not of itself justify a committal under section 11. As regards the other ground for committal to assizes under section 11, the need to commit to assizes on the ground of the gravity or difficulty of the case will arise less frequently now that county quarter sessions are for the most part presided over by legally qualified chairmen of considerable experience. It is recognised that there will from time to time be cases presenting features of special difficulty which may properly be sent to be tried before a judge, and the position of a defendant, for instance if he were a magistrate or the holder of an important office in the county, would be a good reason.

See also Circular No. 64/1954, *ante*, p. 291.

Summary Trial of Minor Offences

Home Office Circular No. 66/1954 dated March 10, 1954

I am directed by the Secretary of State to inform you that he has had under consideration the report of a working party which has been considering measures which might be taken to save the time of witnesses at the summary trial of minor offences. The working party included the Director of Public Prosecutions, and representatives of chief constables, clerks to justices, and the clerks to the Metropolitan Magistrates' Courts.

Some of the working party's proposals would require legislation and will be the subject of further consideration; but the working party also included in its report a number of suggestions, formulated after consultation with the Justices' Clerks' Society and chief officers of police, with regard to the practice of magistrates' courts. These suggestions are set out below and, while the Secretary of State recognises that some are already in use in many courts and not all of them are suitable for adoption in every court, he agrees that, if effect were given to them wherever possible, a saving of the time of police and other witnesses would be secured. He would therefore ask all courts to review their practice in the light of the suggestions set out in this circular, and hopes that they will make use of such of these suggestions as may seem suitable to their circumstances.

SAVING TIME BY ADMINISTRATIVE METHODS

The working party made the following suggestions for saving time by administrative methods.

Careful advance preparation of the court lists, and constant reviews of the lists with a view to reducing waiting time to a minimum, can often substantially reduce the time spent by persons attending court. In particular, time can be saved by having shorter lists of cases and more frequent sittings of the court where this is practicable. In busy places, where staff and accommodation are adequate, several courts can be held simultaneously. In rural areas, where justices meet fortnightly or less frequently and lists are often lengthy, courts might be held more frequently and undertake less business at each sitting.

In the case of courts which sit daily, it may be found convenient to take similar cases (for example, matrimonial and kindred complaints, or the summary trial of certain kinds of minor offences, such as traffic offences) at one sitting and, if possible, on the same day in each week. Lists could also with advantage be arranged in the same way where several courts sit at the same time, so that cases of the same type would all be heard in one court instead of a few in each. Wherever court lists are so arranged care would no doubt be taken to ensure that justices are given the opportunity to deal with all types of cases in turn; where the same justices sit on the same day of each week, therefore, some adjustment of lists to justices would be necessary.

Those responsible for the preparation of lists might endeavour to ascertain and take account of the convenience of witnesses and other persons whose presence is required, and set down their cases for suitable dates, especially in longer cases. Separate days could be set apart for taking lengthy cases. Advocates and others could be encouraged to confer with the clerk to the justices when adjournments are contemplated. Times could be fixed before which particular cases would not be taken.

At the commencement of each court, and from time to time as it proceeds, the clerk to the justices could review the list of cases. By this means he could discover in which cases advocates were concerned and what was likely to be the plea in these and other cases where the defendants were present. Advocates whose clients plead guilty often indicate that they do not require any evidence to be called and defendants attending in person who plead guilty are usually content with a short factual statement by the prosecutor. Cases in waiting which cannot be reached before the luncheon adjournment, or at that day's sitting, can be released at an earlier hour. Where two or more courts are sitting at once, cases not reached in one can sometimes be transferred to another which has finished its own.

ASCERTAINING THE INTENTIONS OF THE DEFENDANT

The working party made the following suggestions about ascertaining the intentions of the defendant.

In some courts there could be a considerable saving of the time of witnesses if the informant were aware in advance which cases would not be defended. The working party recommended that in appropriate cases the summons should be accompanied by a document issued by the court inviting the defendant to intimate as soon as possible (a) whether or not he wishes the justices to excuse him from attendance and (b) whether or not he admits the charge, and that the substance of his reply should then be communicated to the informant.

In the Home Office Circular of May 13, 1943, it was indicated that there might be some dangers in the practice of inviting defendants to indicate their intention by letter. Under the present law a plea of guilty submitted by letter cannot be admitted, and it is therefore necessary, notwithstanding any written admission of guilt by an absent defendant, for the informant to establish the charge by evidence on oath. It would often be possible, however, for the informant to dispense with the attendance of all except one material witness without prejudice to the proof of the essential facts, and the Secretary of State is disposed to think that the advantages of asking the defendant to state his intentions might be so great that, subject to the considerations mentioned below, the practice recommended by the working party might justifiably now be tried.

If such a practice is followed, it is essential that the invitation to the defendant should be carefully framed, so as to make it clear that he is perfectly free to attend and deny the charge or urge circumstances of mitigation if he so wishes, and there must be nothing to suggest that he is being urged to admit the charge in order to save the time of witnesses or of the court. The notice should not be sent in cases to which sections 18, 19, or 25 of the Magistrates' Courts Act, 1952, apply or in other cases in which the clerk has reason to expect that the presence of the defendant may be necessary. The Secretary of State does not wish to suggest a set form of notice, but the form in the Appendix to this Circular may be of use to clerks to justices in framing a notice to suit the needs of their particular courts.

The Secretary of State suggests that, in order to give adequate time for the defendant's reply to be received and communicated to the informant, the return day should be not less than fourteen days after the summons is issued and, on the third or fourth day before the return day, it is suggested, the clerk to the justices should communicate to the informant the result of the replies so far received from defendants, and continue to do so thereafter if the replies seemed likely to be of use.

Among defendants who write and ask to be excused there may be some who have previous convictions which cannot be proved in their absence, and which it is desired to prove in court. In such cases it will be open to the prosecution to intimate that the defendant's attendance is desired, and it is for this reason among others that it should be made clear to defendants that the ultimate decision whether they must attend or not rests with the court.

Appendix

Suggested form of notice

[*To be inserted where the summons is served by post*] :—Please acknowledge the receipt of the enclosed summons (summonses) by filling up the accompanying form of acknowledgment and forwarding it without delay to the Clerk to the Justices at the above address.

You are not obliged to answer any of the questions set out below, but if you are willing to do so and will return this paper to the Clerk to the Justices at the above address within 7 days considerable time and inconvenience may be saved.

1. (a) Do you intend to appear at the court in person or by solicitor or counsel?

or

(b) Do you wish the court to proceed in your absence if they are willing to do so? If you do not appear and the court decide that you must appear, the case will be adjourned and you will receive a further notice as to the day it will be heard.

2. Do you intend to deny the charge*/any of the charges?

If you deny the charge*/any of the charges, you should appear with any witness you may wish to bring.

or

Do you intend to admit the charge*/all the charges?

If so, you may set out here any matter which you may wish the court to consider by way of mitigation.

You are at liberty at any time to change your mind as to whether or not you will appear and if you do appear the court will not be informed whether or not you have admitted or denied the charge*/charges. If you do change your mind, please let the Clerk know before the hearing that you have done so.

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* To be deleted by the Clerk to the Justices, as appropriate.

Case and Comment

[Reports of cases included here are prepared by C. J. ELLIS, *Barrister-at-Law*, unless otherwise appears]

Arrest — *Foreign serviceman — non-payment of arrears on affiliation order*

R. *v.* BIRKENHEAD BOROUGH JUSTICES, *ex p.* SMITH[1] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Slade JJ.: February 9, 1954) ([1954] 1 W.L.R. 471; [1954] 1 All E.R. 503).

S. obtained an affiliation order against W., a soldier serving in the American Forces in England. S. then applied to the justices under sections 64 (1) and 74 of the Magistrates' Courts Act, 1952, to issue a warrant for the arrest of W. for non-payment under the order. The justices refused to issue the warrant, expressing doubts as to their jurisdiction in the matter. S. was given leave to appeal for an order of mandamus ([1954] Crim.L.R. 133). At the hearing of the application:—

Held, refusing an order for mandamus, that (1) as the United States of America (Visiting Forces) Order, 1942, provides that any privilege or immunity granted under the Army Act shall apply to American soldiers in this country, section 145 of the Army Act, which provides that the person or pay of a British soldier cannot be taken in execution for the purpose of a bastardy order, clearly extends to American soldiers; accordingly the justices were right in refusing to issue the warrant: (2) if the warrant were asked for on the ground that W. had returned to America, which it appeared was the case, it would be of no use to S. if the justices gave an order because there was no means of issuing execution on W. in America.

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[1] For the applicant: *C. J. I. Cunningham* (instructed by Field, Roscoe & Co. for Berkson & Berkson, Birkenhead). As *amici curiae*: *Sir Lionel Heald Q.C., Att.-Gen., J. P. Ashworth* (instructed by the Treasury Solicitor).

Aviation—*Low-flying—helicopter taking aerial photographs*

MINISTER OF TRANSPORT AND CIVIL AVIATION *v.* EVENING STANDARD CO. AND GREEN [2] (Woolwich Magistrates' Court: Mr. A. L. Stevenson, Stipendiary Magistrate: February 11, 1954).

A helicopter owned by the first defendants and piloted by G., the second defendant, was flown by G. at a height of less than 60 feet over the scene of an aircraft crash in the vicinity of Woolwich arsenal for the purpose of taking aerial photographs. The defendants were charged with a breach of article 44 of the Air Navigation Order, 1949, under which every person and aircraft must comply with the rules of the air and air traffic control contained in Schedule II to the Order.

The first rule alleged to have been broken was rule 14 (2), which prohibits an aircraft from flying over any town at an altitude of less than 1,000 feet above the highest obstacle (except when departing from or about to land at an aerodrome or with the special permission in writing of the Minister). The second rule alleged to have been broken was rule 14 (4), which prohibits an aircraft from being flown in such a manner or in such circumstances as, by reason of low altitude or proximity to persons or dwellings or to other aircraft, or for any other reason, to cause unnecessary danger to any person or property (including animals) on land or water or in the air.

It was contended for the prosecution that as regards the second offence charged it was not necessary to prove that any damage had been caused and that the fact of flying at such a low height, coupled with the fact that there was a building containing high explosives and other obstructions in the vicinity, clearly constituted an unnecessary danger to persons and property on the ground. For the defendants it was contended that there was no evidence that Woolwich Arsenal was a town, *i.e.*, " a space which for the time being is occupied by houses " (see Stroud's *Judicial Dictionary*, 3rd ed., Vol. 4, pp. 3053–5) and that it was necessary for the prosecution to show that there was actual and unnecessary danger.

The magistrate *held* that Woolwich Arsenal was a town or part of a town within the meaning of rule 14 and that the height at which the helicopter was flown over the scene of the aircraft crash did not give sufficient manoeuvrability without danger. Each defendant was found guilty on each charge and fined. [Reported by B. M. Stephenson, Solicitor.]

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[2] For the prosecution: B. M. Stephenson, Assistant Treasury Solicitor. For the defendants: *Lord Hailsham Q.C.*, *Mervyn Griffith-Jones* (instructed by Messrs. Withers & Co.).

COMMENTARY. For penalties, see article 65 of the Air Navigation Order, 1949.

Conspiracy—*Separate trials.* See R. *v.* NORMAN; R. *v.* FIRST, p. 310.

Education—*School attendance—nearest available route*

FARRIER *v.* WARD [3] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 25, 1954) ([1954] 1 W.L.R. 306; [1954] 1 All E.R. 336).

W., an education welfare officer, preferred an information against F., charging that he, being the parent of a child of compulsory school age, a registered pupil at a county primary school, who had failed to attend regularly at school between April 21 and August 26, contrary to section 39 (1) of the Education Act, 1944, was guilty of an offence. At the hearing of the information the following facts were proved or admitted. F. was the parent of a child of compulsory school age who was under eight years old and a registered pupil at a primary school who failed to attend during the material period. The route from the child's home to school was less than two miles and was safe for the child if escorted. The child had to travel by part of a road near the school where an escort would be desirable for small children. It was the duty of the parents to provide an escort but the education authority provided an omnibus which took the children to and from school. On the return journey the omnibus reached the school at 4.45 p.m. but the children finished their lessons at 3.45 p.m. F. wanted a special omnibus from the school and would not provide an escort. It was contended on F.'s behalf that as the direct route was not safe for his child and the afternoon bus was not suitable transport, he was prevented by unavoidable cause within the meaning of section 39 (2) from sending his child to school. Section 39 (2) (*c*) provides that a child shall not be deemed to have failed to attend school if his parent proves that the school is not within walking distance of the child's home. Section 39 (5) provides that walking distance means "in relation to a child who has not attained the age of eight years two miles, . . . measured by the nearest available route." It was contended that "nearest available route" meant a route that was safe for a child of the age specified to use. The justices convicted F. and another parent similarly charged. F. appealed.

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[3] For the appellant: *M. D. Van Oss* (instructed by Jaques & Co. for Girling, Wilson & Bailey, Margate). For the respondent: *Gerald A. Thesiger Q.C.*, *K. Jupp* (instructed by Sharpe, Pritchard & Co. for Gerald Bishop, Maidstone).

Held, dismissing the appeal, that "available" did not mean necessarily safe; if there was a route along which a child could walk and it did not exceed two miles, that was the "nearest available route."

COMMENTARY. See Stone, 85th ed., 741–2. As to other meanings of "nearest" see Stroud's *Judicial Dictionary*, 3rd ed., vol. 3, 1866.

Education—*Verminous child—liability of mother*

PLUNKETT *v.* ALKER [4] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 25, 1954) ([1954] 2 W.L.R. 280; [1954] 1 All E.R. 396).

C. P., who lived with his mother and father, was a pupil at a county school. C. P.'s hair having been found to be infected with vermin was cleansed under a compulsory cleansing order. Some time later C. P.'s hair was again found to be in a verminous condition and his parents were charged that they were the parents of a child who after having been cleansed was again found to be infested with vermin due to the neglect of his parents contrary to section 54 (6) of the Education Act, 1944, which provides: "If, after the cleansing of the person . . . of any pupil has been carried out under this section, his person . . . is again found to be infested with vermin . . . while he is in attendance at a school maintained by a local education authority . . . and it is proved that the condition . . . is due to neglect on the part of his parent, . . . the parent . . . shall be liable on summary conviction to a fine not exceeding twenty shillings." At the hearing of the information the charge against the father was withdrawn. The magistrate found that the condition of C. P.'s hair was due to his mother's neglect and convicted her. She appealed on the ground that where a child was living together with his parents, the father was the parent of the child for the purposes of the Education Act, 1944.

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[4] For the appellant: *J. Collinson* (instructed by W. F. Foster, Hedge & Clare for A. Stephen Cawson, Liverpool). For the respondent: *D. McNeill* (instructed by the Town Clerk, Liverpool).

Held, that the definition of "parent" in section 114 (1) which "includes a guardian and every person who has the actual custody of the child . . ." did not exclude the mother but only defined persons who might be included in the word "parent" and as the magistrate had found that the condition of the child's head was due to the mother's neglect she was rightly convicted.

COMMENTARY. The court doubted the decision in *L. C. C.* v. *Stansell* (1935) 154 L.T. 241; 30 Cox C.C. 335, where it was held that the mother of a child was not liable under a similar provision contained in the Education Act, 1921, s. 87, and distinguished the present case because of the difference in wording of the Acts of 1921 and 1944.

See Stone, 85th ed., 749–750. As to other meanings of "parent" in Education Acts, see Stroud's *Judicial Dictionary*, 3rd ed., vol. 3, 2081–2.

Evidence—*Accomplice.* See DAVIES *v.* DIRECTOR OF PUBLIC PROSECUTIONS, p. 305.

Labour Laws—*Catering industry*—*payment of statutory minimum wage*

PEOPLE'S REFRESHMENT HOUSE ASSOCIATION *v.* JONES[5] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 20, 1954) ([1954] 1 W.L.R. 339; [1954] 1 All E.R. 317).

A was employed by the appellants as the manager of a licensed non-residential establishment under a contract which provided that his salary should be in accordance with the scales laid down by the Catering Wages Act, 1943, and the Wages Regulation (Licensed Non-residential Establishment) (Managers and Club Stewards) Order, 1952. At the same time another contract was made between the parties which was expressed to be subsidiary to the service agreement, which provided that A might carry on a catering business at the premises and could keep the profits in consideration of his paying the appellants £3 a week out of those profits. A paid the appellants £13 a month in respect of the catering agreement. The appellants paid him a salary which was above the statutory minimum wage, but if the £3 a week paid by A to the appellants was deducted from his salary it would be below the minimum wage. The appellants were charged with failing to pay A remuneration not less than the statutory remuneration. The justices convicted the appellants. On appeal:—

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[5] For the appellants: *F. W. Beney Q.C.*, *C. J. Doughty* (instructed by Faithfull, Owen, Wright & Armstrong). For the respondent: *S. B. Cooke* (instructed by the Solicitor, Ministry of Labour and National Service).

Held, dismissing the appeal, that the two contracts were not separate and independent agreements but should be read together and that A's weekly payment of £3 to the appellants should be deducted from A's remuneration. Therefore the appellants had failed to pay A the statutory minimum wage.

COMMENTARY. Lord Goddard C.J. considered that if the catering agreement had provided that the manager was to pay over all the profits of the catering business to his employers who were then to return the profits to him less £3, it would not have been caught by the Act. The test in such cases is whether or not an agreement such as the catering agreement is a separate and independent contract from the contract of service. See Stone, 85th ed., 1341–6.

Labour Laws—*Wages regulation—information charging offence—sufficiency*

STEPHENSON *v.* JOHNSON [6] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 28, 1954) ([1954] 1 W.L.R. 375; [1954] 1 All E.R. 369).

S. carried on a dairy business. On Sunday, December 21, 1952, she employed T. to wash milk bottles from 9 a.m. to 1.30 p.m. for which she paid him 16s. 6d. T. had other full-time employment but when he was free on Sundays he went to the dairy and asked for work. S. was charged that she "being an employer of workers to whom the Milk Distributive Wages Council (England and Wales) Wages Regulation Order, 1952, made under the Wages Council Act, 1945, applies, did on December 21, 1952, . . . unlawfully fail to pay remuneration not less than the statutory minimum remuneration to George Harry Tarry one of the said workers, contrary to section 11 of the Wages Council Act, 1945, and the said order made thereunder." It was contended on S.'s behalf that the information charging S. with the offence was insufficient. The justices considered that the information was sufficient; they found that T. should have been paid 18s. 11d. and convicted S. S. appealed.

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[6] For the appellant: *John Hobson* (instructed by Sharpe, Pritchard & Co. for Becke, Green & Stops, Northampton). For the respondent: *S. B. R. Cooke* (instructed by the Solicitor, Ministry of Labour and National Service).

Held, allowing the appeal, that the relevant schedule of the order contains several parts, several paragraphs and several definitions and to find out the correct wage to be paid to an employee the employer has to find out his age, the nature of his employment and many other things. Informations such as that in the present case should contain a reference to the particular paragraph of the schedule, information with regard to the particular nature of the man's employment and possibly his age. Accordingly, the information was bad and the justices should not have entertained it.

COMMENTARY. See Stone, 85th ed., 1353–9, 2632–3.

Landlord and Tenant—*Rent controlled premises—charge of excess rent*

GLUCHOWSKA *v.* TOTTENHAM BOROUGH COUNCIL[7] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 29, 1954) ([1954] 2 W.L.R. 302; [1954] 1 All E.R. 408).

Twenty informations were preferred against G. charging her with receiving rents in excess of the registered rent contrary to section 4 of the Furnished Houses (Rent Control) Act, 1946, on twenty occasions specified in the informations. G. had originally let three fully furnished rooms and a kitchen, the rent for which was fixed by the rent tribunal at 27s. and entered on the register together with the specifications of the premises. G. subsequently let one of those rooms and the kitchen to H. at a rent of £2, subsequently reduced to 30s. H. referred the contract to the rent tribunal who adjourned the reference *sine die*. The justices at the hearing of the informations found that G. had contravened the Act and convicted her, fining her £2 in respect of each offence and ordering her to repay £9 received from H. in excess of the registered rent. On appeal:—

Held (Lord Goddard C.J. dissenting), that "those premises" in section 4 clearly referred to the unit entered in the register, *i.e.*, the three rooms and kitchen and as the money received from H. was not on account of that unit but for a different unit, namely one room and a kitchen, no offence had been committed.

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[7] For the appellant: *J. F. Donaldson* (instructed by Windsor & Co.). For the respondents: *J. P. Widgery* (instructed by the Town Clerk, Tottenham).

Held, by the whole court, that the fine of £40 was out of all proportion to the offences proved.

COMMENTARY. Furnished Houses (Rent Control) Act, 1946, s. 4: "(1) Where the rent payable for any premises is entered in the register . . . it shall not be lawful to require or receive—(*a*) on account of rent for those premises in respect of any period subsequent to the date of such entry, . . . payment of any sum in excess of the rent so entered; . . ." See Stone, 85th ed., 1427–8.

Larceny—*Evidence—recent possession of goods stolen*

R. *v.* HOLMES [8] (Court of Criminal Appeal: Lord Goddard C.J., Byrne and Parker JJ.: January 12, 1954).

X's house was broken into one evening between 8.0 p.m. and 10.30 p.m. and a ring was stolen. The next morning H. tried to sell the ring in a jeweller's shop. He was convicted of breaking and entering and stealing a ring from X's house. On appeal:—

Held, that where a man is found in possession of property, the proceeds of quite a recent theft, that is evidence on which a jury can find that he is guilty of stealing.

COMMENTARY. The authority for this decision is *R.* v. *Loughlin* [1951] W.N. 325; 35 Cr.App.R. 69, where a club pavilion was broken into and two bottles, one of whisky and one of brandy, were stolen. An hour or two later the accused was stopped by the police and both the bottles were found in his attaché case. It was held by the Court of Criminal Appeal that there was sufficient evidence for the jury to find him guilty of housebreaking. See Archbold, 33rd ed., 682.

London—*Building line—whether canvas car shelter a "structure"*

L. C. C. *v.* TANN [9] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 28, 1954) ([1954] 1 W.L.R. 371; [1954] 1 All E.R. 389).

T. erected a car shelter in the small garden in front of her house by fixing a tubular steel framework to the gateposts and covering it with a specially made canvas cover. The shelter had sliding canvas curtains at the entrance. The local borough council altered the pavement at T.'s expense so that she could drive her car in and out. The L. C. C. charged T. with erecting a structure beyond the general line of buildings without the council's written consent, contrary to section 22 of the London Building Act, 1930, which provides: "(1) No building or structure shall without the consent in writing of the council be erected . . . (*a*) beyond the general line of buildings. . . ." A person contravening the section is liable to a fine. The magistrate, dismissing the information, held that the car shelter was not a structure within the meaning of section 22 but was something in the nature of a tent. On appeal:—

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[8] For the appellant: *B. J. Wakley* (instructed by the Registrar of the Court of Criminal Appeal). For the Crown: *D. M. Keegan* (instructed by Young & Pearce, Nottingham).

[9] For the appellants: *Percy Lamb Q.C.*, *William Scrivens* (instructed by J. G. Barr, Solicitor, London County Council). For the respondent: *Charles Lawson* (instructed by Thornton, Lynne & Lawson).

Held, allowing the appeal, that the object of putting up the shelter was to provide T.'s house with a garage and it was meant to be permanent. Looking at it from the point of view of a man of the world, the car shelter was a structure within the meaning of section 22.

COMMENTARY. As to other meanings of structure, see Stroud's *Judicial Dictionary*, 3rd ed., vol. 4, 2885–8.

Murder—*Evidence—accomplice—who is an accomplice*

DAVIES *v.* DIRECTOR OF PUBLIC PROSECUTIONS[10] (House of Lords: Lord Simonds L.C., Lords Porter, Oaksey, Tucker and Asquith of Bishopstone: February 19, 1954) ([1954] 2 W.L.R. 343; [1954] 1 All E.R. 507).

B. and some other young men were attacked by a gang of eight or ten youths including the appellant D. The fight began at a drinking fountain. B. and another broke away and boarded a bus. B. was pulled off and he and his companion were again attacked by a group of at least six youths including D. Finally B. was left on the pavement with eight stab wounds from which he died. Originally six persons including D. were charged with murder. When the case came on for trial no evidence was offered against four of those persons including one L. and they were acquitted, but the jury failed to agree with regard to the two others. L. was later convicted of common assault and sentenced to nine months' imprisonment. D. was subsequently retried on the murder charge and L. gave evidence. The prosecution's evidence showed that D. had produced a knife at the fountain and said "I will be all right with this." The knife was never discovered but a cheap green-handled knife, easily obtainable, was produced at the trial and identified by witnesses as being similar to the one in D.'s hand. A woman on the bus identified D. as being the person who seemed to shake B. She saw him make a shutting motion with a green-handled object which he put in his pocket. She thought it was a knife. There were traces of blood on D.'s clothes. L., who was one of those who started the fight and remained throughout, gave evidence that he saw D. shortly after the fight, which D. agreed. He said that D. told him that all he had tried to do was to run a knife up and down B. but did not stab him. D. agreed that the words that might have been used were that somebody must have put a knife up and down B. D. was convicted of B.'s murder. D. appealed to the Court of Criminal Appeal, his main ground of appeal being that the judge had failed to warn the jury that L. was an accomplice or was to be regarded as such and that it would be dangerous to rely on his evidence unless it was corroborated. The court dismissed the appeal. D. appealed to the House of Lords on the same ground.

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[10] For the appellant: *David Weitzman Q.C.*, *R. R. Russell*, *Peter Weitzman* (instructed by Thomas V. Edwards & Co.). For the Crown: *Sir Lionel Heald Q.C.*, *Att.-Gen.*, *Christmas Humphreys*, *Maxwell Turner* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeal, that (1) the rule of practice, that a judge should warn a jury that where an accomplice gave evidence for the prosecution, although they might convict on his evidence, it was dangerous to do so unless it was corroborated, now had the force of a rule of law, and if a judge failed to warn a jury, the conviction should be quashed.

(2) The following persons were to be treated as accomplices: (*a*) persons who were *participes criminis* in respect of the actual crime charged, whether as principals or as accessories; (*b*) on a trial for larceny, persons who had received stolen goods from the accused; (*c*) where a person was charged with a specific offence and evidence was admitted of his having committed similar crimes to show a system, evidence of other similar offences given by parties to them should not be left to the jury without a warning. There was no reason for any further extension of the term accomplice.

(3) If a group of boys fought another group and one of them produced a knife and stabbed one of the opponents to death, there was no reason why the rest of the group should be treated as accomplices since all that was envisaged was common assault. There was no evidence that L., a party to the common assault, knew that any of his companions had a knife. Accordingly L. was not a *particeps criminis* in respect

of the crime charged and therefore was not an accomplice to the crime of murder.

COMMENTARY. This case will be fully considered in an article in a future issue of this Review. See Archbold, 33rd ed., 344; Glanville Williams, *Criminal Law*, The General Part, § 52.

Police—*Pensions—appeals to quarter sessions*

EAD *v.* HOME SECRETARY [11] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 25, 1954) ([1954] 1 W.L.R. 386; [1954] 1 All E.R. 386).

E., a constable in the metropolitan police force, contracted a tubercular infection of the spine some time after having injured his back while acting in the course of his duty. His application for a pension under the Police Pensions Regulations, 1949, made under the Police Pensions Act, 1948, was refused. He appealed to the Secretary of State who appointed a medical referee under reg. 44, whose decision was final subject to the provisions of reg. 45 which provides: "(1) A court hearing an appeal under section 5 of the Act . . . may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the decision of that authority to him for reconsideration. . . ." The medical referee decided that E.'s disablement was not the result of an injury received in the course of duty. E. appealed from that decision to quarter sessions under section 5 (1) of the Act which provides: "If any person . . . is aggrieved by—(*a*) the refusal of the police authority to admit a claim to receive . . . a pension, . . . he may appeal to a court of quarter sessions. . . . Provided that— . . . (*b*) regulations made under this Act may provide . . . for the reference of any such matter as is specified in the regulations, . . . to a medical practitioner, whose decision thereon shall, . . . be final. . . ." At the hearing E. admitted that the ground of appeal was not that the evidence before the medical referee had been inadequate or inaccurate but that it was an appeal against the decision itself. Quarter sessions refused to hear evidence and dismissed the appeal on the ground that reg. 45 (1) limited their jurisdiction to considering whether the evidence before the referee was inaccurate or inadequate. E. appealed to the High Court under section 5 (3) on the ground that section 5 gave him a general right of appeal which was not cut down by reg. 45 which merely stated what quarter sessions might do with such an appeal.

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[11] For the appellant: *R. D. L. Du Cann* (instructed by Ludlow, Head & Walter). For the respondent: *Mervyn Griffith-Jones* (instructed by the Treasury Solicitor).

Held, dismissing the appeal, that the right of appeal to quarter sessions under section 5 (1) where the matter had been referred to a medical referee was not a general one but was limited by the regulations to an appeal on the ground that the medical evidence before the referee was inaccurate or inadequate.

COMMENTARY. See Stone, 85th ed., 1765–7.

Salmon and Freshwater Fisheries — "*Fixed engine*" — *net fitted with anchors used as a brake*

PERCIVAL *v.* STANTON[12] (Q.B., Divisional Court: Lord Goddard C.J., Byrne and Parker JJ.: January 27, 1954) ([1954] 1 W.L.R. 300; [1954] 1 All E.R. 392).

The defendants were fishing for salmon in the open sea and using a large net. To keep the net in formation they attached three iron anchors to the headpiece, which acted as a brake or drag on the drift or movement of the net, but did not secure the net to the sea-bed as a stationary object. The defendants were charged with unlawfully using a fixed engine, namely a net secured by anchors for taking salmon in tidal waters contrary to section 11 of the Salmon and Freshwater Fisheries Act, 1923. The justices being of the opinion that the net was not a "fixed engine" dismissed the charge. On appeal:—

Held, dismissing the appeal, that "secured by anchors" meant fixed and stationary. Had the anchors been fixed to the net with the intention of anchoring it to the sea-bed it would have been secured by anchors, but as the justices had found that the anchors were used merely to act as a brake it could not be said that the net was a "fixed engine" first, because it was not fixed, and secondly, because it was not secured by anchors.

COMMENTARY. Salmon and Freshwater Fisheries Act, 1923, s. 11: "(1) No fixed engine . . . shall be . . . used for taking . . . salmon . . . in any inland or tidal waters." Section 92 (1): ". . . The expression 'fixed engine' includes—(*a*) stake net, bag net . . . (*c*) any net secured by anchors and any net or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a fishing weir or fishing mill dam."

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[12] For the prosecutor: *J. P. Widgery* (instructed by Sharpe, Pritchard & Co. for N. H. Thomas, Newcastle-upon-Tyne). For the defendants: *C. D. Aarvold, R. A. Percy* (instructed by Crossman, Block & Co. for Adam Douglas & Son, Alnwick).

See Stone, 85th ed., 2198. As to other meanings of "fixed engine" see Stroud's *Judicial Dictionary*, 3rd ed., vol. 2, 1113–4.

Sentence—*Breach of probation order—practice.* See R. *v.* Maber, p. 289.

Sentence — *Corrective training — previous convictions for offences of a type different from offence under consideration*

R. *v.* Cook [13] (Court of Criminal Appeal : Lord Goddard C.J., Cassels and Slade JJ. : February 8, 1954).

C. was convicted of carnal knowledge of a girl under sixteen years old. He was twenty-five years of age and had six previous convictions for dishonesty but none for sexual offences. He was sentenced to three years' corrective training. On an application for leave to appeal the court, treating the application as the hearing of the appeal, varied the sentence to one of nine months' imprisonment. The court did not think that they ought to take the opportunity of C.'s being guilty of a sexual offence to say that he was to go to corrective training. If he had committed a further offence of dishonesty that might be another matter.

Sentence—*Preventive detention and corrective training—proof of previous convictions—service of notice*

R. *v.* Rajf [14] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Slade JJ. : February 23, 1954).

The appellant was charged with breaking and entering a dwelling-house. He had two or more previous convictions which it was intended to prove so that an order might be made under section 22 of the Criminal Justice Act, 1948. A police officer attempted to hand to the appellant a notice setting out the offences which it was intended to prove, but the appellant refused to take the notice. The appellant was convicted at Cardiff City Sessions. The deputy-recorder took the view that the notice had not been properly served and the appellant was not asked if he admitted the previous convictions. The appellant was sentenced to fifteen months' imprisonment, but applied for leave to appeal against conviction only. On appeal:—

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[13] The applicant did not appear and was not represented.

[14] The applicant did not appear and was not represented.

Held, dismissing the application, although the appellant, wisely, had not asked for leave to appeal against sentence, so that the court could not increase it, the court desired to say that the deputy-recorder had been wrong in his view as to service of the notice. The notice was served for the protection of the appellant, so that he should know what previous convictions were to be alleged; if he chose not to read it or take it, and put his hands behind his back and refused to accept service, that was his own lookout, but it could not be said that the provisions with regard to service had not been fulfilled. Accordingly, the notice had been properly served.

COMMENTARY. See Archbold, 33rd ed., 1531–3.

Trial—*Conspiracy—separate trials*

R. *v.* NORMAN; R. *v.* FIRST [15] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Slade JJ.: February 9, 1954) (*The Times*, February 10, 1954).

N. and F. were charged on one indictment containing three counts with conspiring to evade the prohibition of export of diamonds by using B.O.A.C. stewards to carry diamonds on their journeys between London and New York or Montreal. The first count charged N. and F. with conspiring with a number of named persons, including stewards between January 7, 1951, and August 31, 1952. Count 2 charged N. only, with conspiring with some of the same persons in count 1 from June 20, 1951, to August 31, 1952. Count 3 charged F. alone, with conspiring with some of the same persons during the same period. About January, 1952, N. and F. quarrelled. At the trial lasting twelve days both were acquitted on count 1, N. was convicted on count 2 and sentenced to two years' imprisonment and F. was convicted on count 3 and sentenced to two years and six months' imprisonment. They appealed on the ground, which had been submitted to the trial judge, that there should have been separate trials in respect of each count.

Held, dismissing the appeals, that the judge was right in deciding that there should be one trial because it was almost impossible to present such a case unless one could put the whole picture before the jury. The judge had been too favourable in ruling that anything which happened after the quarrel could not be evidence with regard to the joint charge in count 1; that was not right because it was the agreement itself which was the crime. There was no inconsistency between the acquittal on the first count and the verdicts of guilty on the other two counts and there was no ground for interfering with the conviction.

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[15] For the first appellant: *A. P. Marshall Q.C.*, *Victor Durand* (instructed by Alfred Kerstein & Co.). For the second appellant: *R. F. Levy Q.C.*, *G. V. Owen* (instructed by Arthur Ladsky & Co.). For the Crown: *Sir Reginald Manningham-Buller Q.C.*, *S.-G.*, *Richard Elwes Q.C.*, *Malcolm Morris* (instructed by the Solicitor, Customs and Excise).

COMMENTARY. See Archbold, 33rd ed., 59, 1485.

Acts and Orders

Animals

LIVE POULTRY (RESTRICTIONS) ORDER, 1954 (S.I. No. 121): fully operative February 19, 1954; LIVE POULTRY (MOVEMENT RECORDS) ORDER, 1954 (S.I. No. 122): operative February 19, 1954.

The Live Poultry (Restrictions) Order, 1952 (S.I. No. 200) is revoked and replaced with certain amendments. The principal changes are: (1) guinea fowls are included among the birds subject to the Order; (2) poultry and day-old chicks may be sold by auction without a licence if they are moved direct from the hatchery premises to those of the purchaser; (3) the conditions under which sales of poultry may be licensed by a local authority have been modified; (4) a rearer is no longer prohibited from sending less than twenty-five birds to a store poultry market; (5) the expression "store poultry" is redefined so as to exclude birds under the age of one month (or nine days in the case of ducks); (6) dealers may no longer send poultry to an authorised market of store poultry; (7) poultry may not be moved from premises onto which poultry carcases (except those intended to be consumed thereon) have moved within the previous twenty-eight days; (8) poultry removed from an exhibition may not be moved to that or any other exhibition within the following twenty-eight days. No poultry may be moved into an area comprising Wales and certain West Midland counties.

The keeping of records is now governed by the Movement Records Order, the provisions of which are similar to those contained in the 1952 Restrictions Order which has been revoked.

For the powers of the police with regard to these regulations see section 71 of the Diseases of Animals Act, 1950, and as to their contravention, see sections 78–80.

Armed Forces

NAVY, ARMY AND AIR FORCE RESERVES ACT, 1954 (2 & 3 Eliz. 2, c. 10): operative February 10, 1954.

This Act makes certain provisions as to the liability of persons who have served in the armed forces to be recalled to service.

Under section 4 (1) a person who is a member of the reserve by virtue of this Act may be required to furnish a service authority with certain information as to his name, address, occupation or qualifications. For failure to comply with the provisions of this subsection, he is liable on summary conviction to a fine not exceeding £5 and if, in giving any information required, he knowingly or recklessly makes a statement false in any material particular, he is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £50 or both (section 4 (2)). Proceedings may be taken against a person at any place at which he is for the time being (section 4 (3)).

Children

APPROVED SCHOOLS (CONTRIBUTIONS BY LOCAL AUTHORITIES) REGULATIONS, 1954 (S.I. No. 126): operative April 1, 1954.

The contribution to be made by a local authority named in an approved school order to the expenses of the managers of the school during the time that the person to whom the order relates is under the school's care is increased from 68s. 3d. a week to 71s. 9d. a week.

The Regulations of 1953 (S.I. No. 2) are revoked.

Customs and Excise

EXPORT OF GOODS (CONTROL) (CONSOLIDATION) ORDER, 1954 (S.I. No. 118): operative February 8, 1954.

The 1953 Order (S.I. No. 671), as amended, is revoked and superseded, but no change is made in the law.

For penalties for infringement see section 3 of the Import, Export and Customs Powers (Defence) Act, 1939.

Food and Drugs

TRANSFER OF FUNCTIONS (MARKETS) ORDER, 1954 (S.I. No. 141): operative April 1, 1954.

Certain functions of the Secretary of State and the Board of Trade with regard to the regulation of markets in London and elsewhere conferred on them by the Food and Drugs Act, 1938, and various local Acts are transferred to the Minister of Housing and Local Government.

MEAT (RATIONING) (AMENDMENT) ORDER, 1954 (S.I. No. 170): operative February 21, 1954.

Certain retailers who are pork butchers may sell ration free, unprocessed, any pork which is supplied to them by the Minister's authorised agent free from any requirement that it be processed.

Intoxicating Liquors

LICENSING (SEAMEN'S CANTEENS) ACT, 1954 (2 & 3 ELIZ. 2, c. 11): operative in England and Wales July 1, 1954, and in Scotland May 28, 1954.

Regulation 60AA of the Defence (General) Regulations, 1939, which authorises the sale of intoxicating liquor in seamen's canteens without a justices' licence or certificate, is revoked, and provision is made concerning the licensing of such canteens.

It is an offence to sell, supply or consume intoxicating liquor outside permitted hours (section 7) and to sell or supply liquor for consumption off the premises (section 8); the penalty in each case is a fine not exceeding £30.

Certain sections of the Licensing Act, 1953, and of the corresponding Acts in Scotland, which relate to offences connected with licensed premises are extended to apply to canteens licensed under this Act (section 11, Schedule II).

London

LONDON TRAFFIC (PRESCRIBED ROUTES) (NO. 3) REGULATIONS, 1954 (S.I. No. 197): operative March 16, 1954.

Prescribed routes are detailed for Hackney Road, Shoreditch. Fines not exceeding £5 for a first offence and £10 for a subsequent offence may be imposed for contraventions.

LONDON TRAFFIC (NARROW STREET, STEPNEY) REGULATIONS, 1954 (S.I. No. 198): operative March 16, 1954.

Only pedal cycles, invalid carriages, perambulators or handcarts are allowed over so much of Narrow Street, Stepney, as is carried by the swing bridge over the Regent's Canal. Fines not exceeding £5 for a first offence and £10 for a subsequent offence may be imposed for contraventions.

Magistrates' Courts

PETTY SESSIONAL DIVISIONS (HEREFORDSHIRE) ORDER, 1954 (S.I. No. 211): fully operative April 1, 1954.

The petty sessional divisions of Herefordshire are altered.

Merchant Shipping

MERCHANT SHIPPING (NAVIGATIONAL WARNINGS) RULES, 1954 (S.I. No. 104) : operative February 10, 1954.

The information to be sent by masters of British ships registered in the United Kingdom on meeting with dangerous ice, a dangerous derelict, a tropical storm or any other direct danger to navigation is prescribed. Such information is to be sent to ships in the vicinity and the nearest coast station. The Merchant Shipping (Distress Messages and Navigational Warnings) Rules, 1932, are revoked.

For the penalty for contravention of these rules see section 24 (3) of the Merchant Shipping (Safety and Load Line Contraventions) Act, 1932.

MERCHANT SHIPPING (SIGNALS OF DISTRESS) RULES, 1954 (S.I. No. 105) : operative February 10, 1954.

The circumstances in which signals of distress are to be used by British ships, except those registered in certain Commonwealth countries, and by ships within the jurisdiction of the United Kingdom and the circumstances in which such signals, if sent by radio, are to be revoked are prescribed.

For the penalty for contravention of these rules see section 21 (3) of the Merchant Shipping (Safety Convention) Act, 1949.

Road Traffic

ROAD HAULAGE AND HIRE (CHARGES) (REVOCATION) ORDER, 1954 (S.I. No. 98) : operative February 9, 1954.

The 1942 and 1946 Orders (1942, No. 251; 1946, No. 1890) which restricted the permissible charges for the carriage of goods and for the hire of goods vehicles are revoked.

Seamen

MERCHANT SHIPPING (FOREIGN DESERTERS) (KINGDOM OF GREECE) ORDER, 1954 (S.I. No. 144): operative February 14, 1954.

Section 238 of the Merchant Shipping Act, 1894, which relates to the apprehension of deserters from foreign ships within Her Majesty's dominions, is made to apply with certain limitations to seamen and apprentices deserting from ships registered at any Greek port when those ships are within the United Kingdom, the Channel Islands, the Isle of Man or any colony. The Order in Council of July 12, 1887, relating to deserters from such ships is revoked.

Letters to the Editor

"Police Courts"

Sir,

The publishers of *The Criminal Law Review* have invited comments thereon. One assumes that lawyers and those engaged in the operation of criminal law will add yet another publication to their piles of reading matter *only* if it proves original, informative and accurate.

On those scores I challenge the merit of using the term *"Police Court"* and of publishing articles of the type of "A day in a Police Court."

I suggest that the police in England and Wales have as much control over the administration of petty sessional courts as Justices of the Peace or Magistrates have in the workings of Police Stations, thus the term *Police* Court is a misnomer. Whatever misguided legislation dubbed the metropolitan courts as "Police Courts" it is nevertheless true to say that the use of the term outside the metropolitan area was never correct. Even within that area it was unfortunate. The Roche Committee on Justices' Clerks disapproved the use of the name and recommended *Magistrates' Courts* and that name has almost universally been accepted ever since. Even the metropolitan courts now use the title on notepaper, rubber stamps, etc. If counsel, solicitors, or the press perpetuate the use of the obnoxious title "Police Court" there will always be those who will believe that the police have some claim to preferential treatment and that the magistrates or justices are there to serve or watch their interests.

The writer of the articles acknowledges himself to be a Magistrates' Clerk (not a Police Court Clerk let it be noted), and seeks to justify the use of the term "Police Court" because it is engraved in the stonework of the Court House doorway—so much to the discredit of those who allow it so to remain. It is surely significant that one never sees the term " Police Court " in the law reports, reputable journals or the responsible press.

Nor can the publishers lay blame on Mr. Jones' doorstep entirely for they permit " Geoffrey Lincoln " to do the same in both the January and the February issues.

Whether the *Review* will be popular remains to be seen; in these days when there is so much to be read, a new publication will be acceptable mainly if it covers a field not already covered by others. Some of the first contributors achieve that objective; what appeal is " A day in a Police Court " likely to have? Any Clerk to Justices or practising lawyer could write similar material if he had a flair for writing—but how many want to read in their leisure what they practice day by day throughout their professional lives?

In closing I must challenge Mr. Jones' material. At p. 121 Sergeant Quing enters: *" The court is ready, your worship "*—since when has this been the prerogative of a police officer, is it not the Clerk's duty, if anybody's? And again, at p. 35, *" The warrant officer had these letters and saw to it that they were attached to the appropriate summonses when the cases were heard "*—how so? Are not letters sent to the Clerk to the Justices and attached by *him* to the informations or copy summonses, and *retained* by *him* from receipt and thereafter?—what are defendants' letters and copy summonses doing in the hands of the police officers? But perhaps it was a *Police* Court after all?

Yours faithfully,
E. R. Horsman,
Scarborough. Clerk to the Justices.

[See hereon, p. 237, *ante*. With regard to the last paragraph Mr. Jones writes: " The employment of police officers on court duties is one feature which requires careful explanation to the public. There is no standard form of staff organisation for magistrates' courts but in most of them police officers fulfil certain functions. The individual courts decide, within limits, what those functions shall be. The important thing is that the work of police officers in the court is under the direction of the magistrates and the clerk; for the time being they are court officers. That explains the rôle assigned to Sergeant Quing in my articles. The clerk, obviously, cannot do everything in the court himself and certain duties in my imaginary court have been allocated to the warrant officer; but in performing them he is acting not for the police, but for the court, and is under the direction of the clerk."]

Attendance of Witnesses at Magistrates' Courts

Sir,

The system put forward by Mr. J. A. Sutcliffe in his letter in the March issue of the *Criminal Law Review* has one defect. It practically invites the defendant to write a letter setting out his case by encouraging the belief, already too prevalent, that a summons may be defended by correspondence. By all means let the defendant stay away if he does not dispute the charge or intends to let it go by default but I think he should be warned that statements in letters cannot be accepted as evidence and if he wishes to defend the charge it is essential he should appear personally or by counsel or solicitor. A short sentence to that effect would prevent any misapprehension on this point.

Yours faithfully,
E. T. Ray,
Bletchley. Clerk to the Justices.

Sir,

I have read with interest the letter on this subject in your March number, at p. 227. I am puzzled, however, to know how use of the notice referred to results in "saving the time of witnesses."

It seems to me that if the defendant indicates that he will not appear in answer to a summons (whether or not he adds that he admits the offence), the attendance of witnesses is necessary if the prosecution are to prove their case. On the other hand, a statement by the defendant that he proposes to attend and to plead guilty may be insufficient to justify the non-attendance of witnesses—for the court may direct a plea of not guilty to be entered after hearing the defendant's story.

It may be for considerations such as these, I suggest with respect, that the Home Secretary is "trying to evolve a system."

Yours faithfully,
J. R. Norton-Amor,
Gibraltar. Clerk to the Justices.

Books and Periodicals

Reviews:

Psychological Disorder and Crime. By W. Lindesay Neustatter, M.D., B.SC. (PSY.), M.R.C.P. London: Christopher Johnson. 1953. 242 pp. and (index) 4 pp. (21s. net.)

Dr. Neustatter has written this book for the purpose of explaining to the non-medical, and especially to the legal world, much about disorders of the mind.

The arrangement of the book falls, in effect, into two parts. The first consists of a number of chapters describing various disorders of the mind, such as psychoneurosis and schizophrenia. The second, to my mind the more satisfactory, considers various crimes and the types of persons who commit them, for example, sexual perversions, murder and theft. The first three chapters lead the reader to suspect, quite inaccurately, that the author does not appreciate the finer and more subtle points underlying his arguments. These chapters are light and, perhaps, should have been omitted since the later chapters fill out the vital omissions. The last chapter on treatment or punishment is very sketchy and inadequate.

Psychology is understood by the thoughtful man in the street as comprising three categories: psychology, that is, the study of conscious reactions including intelligence tests; psychoanalysis, which has been excellently explained in relation to crime by Dr. Kate Friedlander, in "The Psychoanalytic Approach to Juvenile Delinquency"; and psychiatry. The lawyer will certainly regret that Dr. Neustatter does not explain the fundamental principles upon which the psychiatrist proceeds when employing psychological methods such as (1) reassurance and re-education, (2) suggestion and hypnosis.

Unfortunately, the author does not discuss the experiment by the legislature contained in section 4 of the Criminal Justice Act, 1948. This section provides for the making of a probation order with a condition of psychiatric treatment. Dr. F. H. Taylor, in the Appendix, points out what must be an insuperable difficulty to treatment in many cases, namely: the provision for in-patient treatment only.

The lawyer is primarily concerned with the protection of the public; after that, deterrence of others and reform of the particular criminal may be considered (*R.* v. *Ball* (1951) 35 Cr.App.R. 164). The psychiatrist has a different duty, even if he is called to give expert evidence. This is the crux of the matter when discussion turns upon the training of the judge which, as the author says, does not include dealing personally with individuals. Dr. Neustatter does not seem to appreciate the judge's function in relation to precedent in criminal law. By the broadening of precedents, principles are enunciated and these have to be further developed or modified. It is true that the McNaghten Rules were, unfortunately, not developed empirically. In connection with legal insanity, the author makes much of the *Straffen* case, about which neither the lawyers nor the doctors can feel entirely satisfied. Ralph Partridge in his book on Broadmoor presents a striking picture of rehabilitation at this institution, from which patients may be released, under certain circumstances, to return to ordinary life. Dr. Neustatter seems to suggest that if a patient is released or, as in Straffen's case, escapes from Broadmoor, the McNaghten Rules must protect him.

Dr. Neustatter subscribes to the opinion that favours a separate panel to advise on treatment or punishment. As is well known, the problem then arises: who shall sit on this panel and, indeed, how shall they be selected from within their respective professions? Moreover, if the sentencing function of the judge is removed, what is to be the sanction, which the author mentions, as an incentive to criminals under treatment?

Chapters 14 to 16 on sexual perversions, murder and theft show the author at his best. He has a confusing way of suddenly ceasing to discuss emotional motivation and adopting a legalistic approach. For example, in relation to theft, those who take because they cannot pay or do not want to pay are dismissed as comprehensible and rational offenders and are explained in terms of temptation and opportunity. If this fits the facts, it does not account for crime scientifically. It is unfortunate that, since theft is one of the predominating types of female delinquency, he does not consider female crimes as such.

In the Appendix, Dr. J. Mackwood gives a very interesting and encouraging description of group treatment in prisons. Clearly all criminals are not amenable to this method but it may contain the essence of some treatment in prison which can be called positively therapeutic. Dr. Peter Scott, likewise in the Appendix, throws an interesting light on the nature of delinquency and discusses the important problem of environmental adjustment.

There are vital points which the author has left open or omitted. It is hoped that Dr. Neustatter will follow Chapters 14 to 16 in the next book he writes on this topic.

T. E. James.

A Handbook on Cautions, Oaths and Recognisances, etc. Second edition, by Joseph Wills and Frank Shannon. London: Shaw & Sons, Ltd. 1953. ii and 15 pp. (no index). (6s. 6d.)

The object of this handbook is to provide in handy form the various cautions, oaths, recognisances and a few other things in common use in magistrates' courts. It is bound so that it lies quite flat when opened. It is printed on thick smooth paper and is in very large clear type. It is produced so as to stand hard and constant use in a busy court.

The compilers have done their work faithfully. They have carefully observed the statutory requirements relating to the matters contained in their handbook. Justices and their clerks may use it with complete confidence.

The cautions to be administered to defendants in various circumstances are particularly useful. In the notes to the caution under section 25 of the Magistrates' Courts Act, 1952, a note might have been added drawing attention to the provisions of section 25 (4) and Rule 23, relating to the case where the right of trial by jury depends on a previous conviction.

J. H. Craine.

Books Received:

A Textbook of Forensic Pharmacy. Third edition, by Thomas Dewar, PH.D., Barrister-at-Law. London: Edward Arnold (Publishers), Ltd. 1954. xvi and 278 and (index) 9 pp. (18s. net.)

Lie Detection and Clinical Interrogation. Third edition, by F. E. Inbau and J. E. Reid. London: Baillière, Tindall & Cox, Ltd. 1954. xi and 236 with 86 figs. and (index) 6 pp. (38s. 6d. net.)

Advice on Advocacy in the Lower Courts. Second edition, by F. J. O. Coddington, M.A. Chichester: Justice of the Peace, Ltd. 1954. viii and 34 pp. (no index). (5s. 6d. net.)

Daly's Club Law. Fifth edition, by C. J. Collinge, B.A. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 1954. xxviii and 160 and (index) 14 pp. (18s. 6d. net.)

Articles:

International and Comparative Law Quarterly, Vol. 3.

Provocation in homicide and assault cases: the common law and criminal codes, p. 23.

British Journal of Delinquency, Vol. 4.

The Report on Capital Punishment, p. 158.

Team research on delinquency; a psycho-analytical commentary, p. 173.

Some clinical types in an approved school, p. 189.

Australian Law Journal, Vol. 27.

Sentencing convicted criminals, p. 455.

Solicitor, Vol. 21.

The Report on Capital Punishment, p. 32.

Magistrates' Notebook, p. 37.

Reflections on punishment, p. 47.

Justice of the Peace, Vol. 118.

The Bristol social project—a new approach to delinquency, p. 100.

Wait a moment (parking of vehicles at night), p. 101.

Loss of the right to appeal to quarter sessions by application for case to be stated, p. 116.

Loitering in side-passages, p. 117.

Crime and mental condition, p. 132.

"Zebra Crossings," p. 133.

Driving while disqualified by age, p. 147.

Police Review, Vol. 62.

Goods vehicles, p. 112.

Grievous bodily harm, p. 129.

Crime prevention, p. 144.

Was the officer justified (drunk in charge, section 15 of the Road Traffic Act, 1930), p. 156.

Probation, Vol. 7.

How Canada is handicapped, restrictions on the use of probation, p. 4.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Offensive weapons

The Prevention of Crime Act, 1953, has recently caused difficulties both north and south of the Border. Besides the case of *R.* v. *Jura*, which we report fully on p. 378, two others have recently been heard, namely *R.* v. *Hodgson* and *H.M. Advocate* v. *Green.* The latter raised questions, discussed in the *Scots Law Times* at page 67, but failed to answer them and caused much alarm to all true Scotsmen. A man carrying a skean-dhu was found guilty under the Act of being in unlawful possession of an offensive weapon. Was the national dress of Scotland, or at least a most important part of it, to be proscribed as after the revolution of '45 with, to quote Lord Saltoun " all the dismal consequences that ensued upon the proscription "? It appears, however, that the man was convicted of having an offensive weapon with him in a public place because he brandished it in a manner which indicated that he intended to injure someone, and the Lord Advocate is taking steps to ensure that if a similar case arises again, no charge will be made under the 1953 Act.[1]

Examination under " truth drug "

In *R.* v. *Barker* the accused was charged at the Central Criminal Court with murdering a woman by stabbing. The case is of some interest because Barker was examined when under an anaesthetic given to him in order to assist his memory of the crime; it appears to be the first time that this " truth drug" has been used on someone facing a capital charge. When questioned about this method of examination the Home Secretary said that he saw no reason to change the present practice. With the consent of the accused, the defence may be given facilities to carry out such examinations as they think fit provided they are not likely to injure the accused's health or impair his fitness to stand trial.[2]

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[1] H.L. Debates, Vol. 186, col. 781, March 30, 1954.

We intend to examine this case more fully in an article in a future issue.

Lotteries

The position of the police in relation to lotteries has continued to arouse interest. The Home Secretary has said that he does not propose to introduce any legislation amending the Betting and Lotteries Act, 1934, so as to extend the conditions on which the promotion of lotteries is permitted. Local clubs or charitable organisations can conduct a football pool provided it is on credit terms and is so conducted that it is not a lottery. Certain types of small lotteries falling within sections 23 and 24 of the 1934 Act are also legal.[3]

Chief Constables' reports

The reports show that many police forces still suffer from shortage of officers, but they also show that in some cases the disadvantages suffered are being lessened by the use of team policing and by other ways of saving man-power.

In Birkenhead team policing has been operating for five or six years and, whilst the Chief Constable considers that the scheme is only in its experimental stage, he says that it has proved a valuable means of augmenting depleted strength. In Dudley team policing was tried for twelve months, but was found to give the force no particular advantage either in the detection of crime or in the general policing of the borough. The Chief Constable of Rochdale thinks that the use of wireless patrol cars has advantages over team policing; it ensures that the men on the beat have individual responsibility for particular areas, but gives them assistance when necessary and preserves the element of surprise.

The cautioning of juvenile offenders and enforcing their appearance at Attendance Centres seem to be causes for the reduction of juvenile delinquency in Stoke-on-Trent and

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[2] H.C. Debates, Vol. 525, col. 57, March 18, 1954.
[3] H.C. Debates, Vol. 525, col. 58, March 18, 1954.

Birkenhead where these methods are respectively operated. Use has been made of police juvenile liaison officers in Liverpool for the past three years and the Home Secretary is bringing details of the scheme to the notice of other chief constables.[4]

In Rochdale police dogs have been responsible for five arrests and for the recovery of £146 worth of property. Their value as a preventive agency is not easily assessed but it seems that some would-be criminals have thought better of it on learning that the police dogs were about.

Crime prevention publicity is considered to be instrumental in reducing the amount of crime in Brighton; publicity has been specially directed towards the protection of property.

Prison treatment of sexual offenders

Prisoners convicted of offences of a sexual nature are specially examined by prison medical officers, who are instructed to recommend for psychiatric treatment those likely to respond to it. Such adverse factors as low intelligence, advancing years and a history of persistence in the commission of offences reduce the number of suitable cases. Selected prisoners are sent to Wakefield, Wormwood Scrubs and Holloway and there receive special treatment from visiting psychotherapists, its nature, extent and duration being determined by the doctor in each individual case. Both individual and group methods of treatment are used and special procedures are employed if necessary. Less formal treatment is also given, especially in training establishments.[5]

County of London Quarter Sessions

The address of the County of London Quarter Sessions has been changed from Newington Causeway, S.E.1, to the Sessions House, 181 Marylebone Road, N.W.1 (Telephone PAD 0041–4).

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[4] H.C. Debates, Vol. 523, col. *155*, February 11, 1954.
[5] H.C. Debates, Vol. 525, col. *26*, March 16, 1954.

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Accomplices in Crime

By J. Ll. J. Edwards, ph.d., *Barrister-at-Law*

Classification of Accomplices

Fluctuations during the past hundred and fifty odd years in the importance attached to warning juries against convicting on the uncorroborated evidence of an accomplice have now been finally settled by the decision of the House of Lords in *Davies* v. *Director of Public Prosecutions* [1954] 2 W.L.R. 343. In addition an authoritative, but, it is respectfully submitted, by no means entirely satisfactory, definition has been given as to what constitutes an accomplice for the purpose of such judicial warning. Henceforth, apparently, in criminal cases participants in crime are to be placed into one of two categories which, for purposes of distinction, may be described as " accomplices in the actual crime " and " accomplices in the general criminal transaction." Thus, an " accomplice in the actual crime " covers any person who is *particeps criminis* in respect of the actual crime charged either as a principal or as an accessory before or after the fact. On the other hand, " an accomplice in the general criminal transaction " describes any person who is not *particeps criminis* in respect of the actual crime charged but who was criminally implicated in the transaction which gave rise to the actual crime charged. According to the decision in *Davies* v. *D. P. P.* only in the case of evidence given by an " accomplice in the actual crime " is there an imperative duty upon the trial judge to warn the jury as to the danger of convicting without corroboration. Whilst the House of Lords said nothing as to the position of " accomplices in the criminal transaction " it may be presumed, as acknowledged by the Attorney-General, that in such a case the judge is not obliged to give any warning, but may do so in the exercise of his discretionary powers. The importance of this distinction between the participants in crime will be seen in the ensuing examination of the law relating to accomplices.

The facts in Davies v. *D. P. P.*

It appeared that the deceased, Beckley, and three others were attacked by a much larger gang of youths amongst whom were Davies, the appellant, and Lawson, the alleged "accomplice" in the case. The fight began at a drinking fountain, but Beckley broke away from his assailants and boarded an omnibus, only to be pulled off and have the attack upon him renewed by at least six youths, including both Davies and Lawson. Finally, Beckley was left lying on the pavement with eight or nine stab wounds from which he died shortly afterwards. Although Davies denied that he ever used a knife there was independent evidence, first, that before the fight began Davies had produced a green-handled knife from his pocket saying "I shall be all right with this"; secondly, by a passenger on the bus, that Davies after pulling Beckley off the bus had seemed to shake Beckley, who fell to the ground; and thirdly, by the same passenger, that after Beckley had collapsed Davies walked away and as he did so put a green-handled knife into his right hand inside pocket in which later were found bloodstains. There was no evidence that any of the other assailants either possessed or used a knife. Clearly, as the House of Lords recognised, this evidence was abundantly sufficient to support a verdict of murder.

Grounds of Appeal

The appellant's main ground of appeal, however, related to the trial judge's attitude towards the evidence of Lawson, the alleged "accomplice." Lawson, after first denying all participation in the fight, admitted in evidence that he had lied to the police and that, in fact, he was present both at the fountain and at the bus-stop phases of the fight. Moreover, Lawson stated that, some time after the affray and after he had heard of Beckley's death, he had met Davies at a coffee stall. There Davies had said to him that all he had tried to do was to "run a knife up and down" Beckley, the deceased. That this evidence was not unimportant is evident from the jury's emerging from their retirement to ask the trial judge some questions about it. In summing-up, Hilbery J. did not warn the jury that Lawson's evidence was, or should be treated as, the evidence of an accomplice, and this omission, according to the appellant, constituted a wrong decision on a point of law.

It should, perhaps, be added that there had been a previous trial for murder arising out of the same circumstances in which Lawson was among those, including Davies, who were indicted. On the Crown's offering no evidence against him on the issue of murder Lawson had been formally acquitted and had then given evidence for the prosecution, which led Pearson J., the trial judge, to warn the jury that Lawson's evidence should be treated as that of an accomplice. The jury at this earlier trial had failed to agree and subsequently Lawson, together with other participants in the affray, was arraigned and pleaded guilty to a charge of common assault. It was at the subsequent trial of Davies alone for murder that the trial judge, Hilbery J., did not give the jury any warning as to the evidence of Lawson.

Warning a jury as to the evidence of an accomplice: a rule of practice or of law?

The discretionary doctrine

Delivering the unanimous judgment of the House of Lords in *Davies* v. *D. P. P.*, Lord Simonds L.C. began by tracing the historical development of the customary warning given to a jury as to the danger of convicting a prisoner on the uncorroborated evidence of an accomplice. The Lord Chancellor showed that throughout the last century and a half two conflicting schools of thought—describable as the "discretionary" and "peremptory" doctrines respectively—had manifested themselves as to the nature of such warning. One of the significant features of this examination of the authorities is that until the establishment of the Court of Criminal Appeal in 1907 there seems to have been a general unanimity of opinion that warning the jury in such cases was a matter for the discretion of the trial judge. Thus, in *R.* v. *Jones* (1809) 2 Camp. 131, Lord Ellenborough cited with approval the decision of twelve judges in *R.* v. *Atwood & Robins* (1788) 1 Leach 464, in which case the judges stressed the discretionary nature of any such directions to the jury. Thirty years later, in *R.* v. *Farler* (1837) 8 C. & P. 106, Lord Abinger was prepared to go further and declared that the practice of judges in uniformly telling juries that they ought not to pay any respect to the testimony of an accomplice unless it was corroborated was one "which deserves all the reverence of law." Far less emphatic, however, was the opinion of a strong court in *R.* v. *Stubbs* (1855) Dears.C.C. 555, which was content to say that "it is usual in practice" for the judge to give such a warning, whilst in *R.* v. *Boyes* (1861) 1 B. & S. 311, 322, Blackburn J., in a manner to which he was accustomed, said that in the event of an accomplice giving testimony the trial judge "is not justified in neglecting to caution the jury."

The peremptory doctrine

Such was the position before the setting up of the Court of Criminal Appeal in 1907. Thereafter the "discretionary" view is seen gradually to have been supplanted by enunciation of the "peremptory" character of the warning, but not until the actual decision of the House of Lords in *Davies* v. *D. P. P.* was the *coup de grâce* given to the former doctrine. It will be suggested later that the "discretionary" warning is not altogether buried and may still operate within a certain limited sphere.

The first indication of the shape of things to come was manifested in *R.* v. *Tate* [1908] 2 K.B. 680, 682, where Lord Alverstone C.J. declared that "it is of the highest importance that the jury should be so directed." In that case the court considered that the trial judge's omission to warn the jury constituted a miscarriage of justice and proceeded to quash the conviction, but with an important caveat which will be referred to later.

A few years later, in the leading case of *R.* v. *Baskerville* [1916] 2 K.B. 658, the Court of Criminal Appeal consisting of Lord Reading C.J., Scrutton, Avory, Rowlatt and Atkin JJ., boldly declared that the "rule of practice has become virtually equivalent to a rule of law," citing in support the decision in *R.* v. *Tate.* The opinion was voiced by Lord Reading C.J. that in the event of the trial judge failing to give the warning, the Court of Criminal Appeal would be bound to set aside the conviction. Further support for the "peremptory" nature of the warning was forthcoming in *R.* v. *Beebe* (1925) 19 Cr.App.R. 22, 25, where Lord Hewart C.J. said that the duty to warn the jury of the danger of acting on the uncorroborated testimony of an accomplice was "not a rule to be neglected in some cases and observed in others, but a rule of universal application." As might be expected, the same view was adopted by Lord Hewart C.J. in *R.* v. *Davies* (1930) 22 Cr.App.R. 33, and again in *R.* v. *Lewis* [1937] 4 All E.R. 360, two cases with which we shall be concerned later. In the light of this consistent emphasis on the imperative necessity of warning juries it is odd to note the discordant opinion expressed in *R.* v. *Garland* (1943) 29 Cr.App.R. at p. 46 by Humphreys J., who reverted to the discretionary character of the warning, saying: ". . . this court will do nothing to weaken the force of those judgments in which it has been repeatedly said . . . that it is *most desirable* that a judge . . . should remind the jury of the danger of convicting upon the evidence of an accomplice unless corroborated." A few years later, however, in *R.* v. *Mohamed Farid* (1945) 30 Cr.App.R. 168, 174, a differently constituted court upheld the " peremptory " view, Tucker J. stating that the rule " which was originally one of practice has now become to all intents and purposes a matter of law." Faced with these two rival versions of the rule as to warning, *viz.*, the " discretionary " and the " peremptory " doctrines, the House of Lords in *Davies* v. *D. P. P.* have now decided that " whichever might be preferred if the matter were *res integra*, as things are the cases laying down the stricter rule have the preponderant weight of authority on their side, and should be adopted. . . ." This, then, is the modern position. In cases where an accomplice gives evidence the trial judge in his direction to the jury must *as a rule of law* warn them that, although they may convict upon his evidence, it is dangerous to do so unless it is corroborated.

Effect of failure to warn the jury

What then are the consequences of an omission to warn the jury along the above lines? Here again a distinct development is noticeable in the attitude adopted by the Court of Criminal Appeal. Obviously, whilst the current tendency was to regard the warning as discretionary in character no appellate court would readily interfere if the trial judge saw fit to neglect giving any direction to the jury about the evidence of an accomplice. Fresh ground was broken in *R.* v. *Tate* [1908] 2 K.B. 680, in which, it will be recalled, the Court of Criminal Appeal quashed the conviction on the express ground of the failure to give the jury the customary warning. It is important, however, to realise that the court in that case entered a caveat to their ruling stating that, notwithstanding the trial judge's omission, had there in fact been substantial corroboration of the accomplice's evidence they would not have set aside the conviction. In other words, the proposition was put forward that in the event of there being sufficient corroboration it, in itself, would be regarded as an adequate substitute for compliance with the rule as to warning the jury. Although strictly unnecessary to the actual decision in *R.* v. *Baskerville*, in which a more than sufficient warning had been given to the jury, the Court of Criminal Appeal expressed the view that if the trial judge failed to give the warning the appellate court would be bound to set aside the conviction. This strict principle, according to Lord Reading, originated in *R.* v. *Tate* but, as stated above, the court in that earlier case qualified their ruling with an important proviso.

The modern position

When next the matter came before the Court of Criminal Appeal for consideration, in *R.* v. *Lewis* [1937] 4 All E.R. 360, a more cautious approach was manifested. First, the court agreed with the earlier decisions in *Tate* and *Baskerville* that failure to warn the jury is not necessarily fatal to the conviction. Secondly, the court agreed with the ruling given in *Tate* that the absence of a warning might be remedied by the existence of corroborative evidence of " a convincing, cogent and irresistible character." But thirdly, and it is in this lies the importance of *R.* v. *Lewis*, it was held that such corroborative evidence would not be considered a sufficient substitute unless the Court of Criminal Appeal considered that the jury would inevitably have reached the same conclusion if an express warning had been given by the judge. In other words, so far as the appellate court is concerned the predominant question is whether, taking into account all the corroborative evidence which may exist, the trial judge's failure to warn the jury constitutes a substantial miscarriage of justice within the meaning of the proviso to section 4 (1) of the Criminal Appeal Act, 1907. The House of Lords in *Davies* v. *D. P. P.* accepted this statement of the law as correctly laying down the principles to be applied, with one slight but significant alteration, *viz.*, that what must be considered is what the probable reaction of a reasonable jury to an express warning would have been and not that of the jury in the particular case.

Jury's unfettered right to convict upon unconfirmed evidence

It is important to keep separate (1) the now imperative duty of the judge to warn the jury of the danger of convicting on the uncorroborated testimony of an accomplice, and (2) the absolute, unfettered right of the jury to convict a prisoner even though there is no corroboration. Throughout the many years in which the direction of the judge to the jury has been variously interpreted no doubt has ever been cast on the inviolate discretion of the jury to convict upon the evidence of an accomplice alone. As far back as 1809 in *R.* v. *Jones*, 2 Camp. 131, Lord Ellenborough stated: "No-one can seriously doubt that a conviction is legal, though it proceed upon the evidence of an accomplice only. Judges in their discretion will advise a jury not to believe an accomplice unless he is confirmed . . .; but if he is believed, his testimony is unquestionably sufficient to establish the facts which he deposes." Again, in *R.* v. *Stubbs* (1855) Dears.C.C. 555, 557, a strong court consisting of five judges, Jervis C.J., Parke B., Wightman, Cresswell and Willes JJ., declared: "It is not a rule of law that an accomplice must be confirmed in order to render a conviction valid; and it is the duty of the judge to tell the jury that they may, if they please, act on the unconfirmed testimony of an accomplice." To the same effect is the statement in *Re Meunier* [1894] 2 Q.B. 415, 418, by Cave J., who underlined the unqualified discretion of the jury in these words: "I know of no power to withdraw the case from the jury for want of corroborative evidence, and I know of no power to set aside a verdict of guilty on that ground." These citations are all taken from cases decided before the creation of the Court of Criminal Appeal, but it will be found that subsequent to 1907 the same principle is accepted without any doubts being cast as to its validity. Thus the views expressed in *Stubbs* and *Re Meunier* were given unqualified approval by the Court of Criminal Appeal in *R.* v. *Tate* [1908] 2 K.B. 680, 682, in *R.* v. *Baskerville* [1916] 2 K.B. 658, 663, and again in *R.* v. *Beebe* (1925) 19 Cr.App.R. 22. There is, then, no doubt as to the judge's duty to inform the jury that it is within their legal province to convict upon such unconfirmed evidence, and, although the question did not arise in *Davies* v. *D. P. P.*, the House of Lords accepted without cavil the principle enunciated above.

Trial judge's right to advise a jury not to convict

Side by side with this complete freedom of the jury to disregard or act upon the uncorroborated evidence of an accomplice is the right of the trial judge to *advise* the jury as to the course which they should adopt. The jury are in no way bound to accept the judge's advice, but it is important to appreciate that in practice this discretionary advice by the judge must have a considerable bearing on the verdict which a jury returns. The effect on a jury of twelve laymen, who in one breath are told that they have every right to convict even though there is no corroboration, and in the next breath are advised by the judge that they should not convict because there is no corroboration, is not difficult to conjecture. What was said a hundred years ago in *R.* v. *Stubbs* (1855) Dears. C.C. 555, 557, by Jervis C.J., *viz.*, that juries generally attend to the direction of the judge and require confirmation, is undoubtedly just as true today. Some judges, however, have interpreted their discretionary power to advise a jury not to convict in what would appear to be an unjustified fashion. For example, in *R.* v. *Boyes* (1861) 1 B. & S. 311, 322, Blackburn J. went so far as to say that in certain cases a judge should caution the jury so strongly against the evidence of an accomplice, if uncorroborated, "as almost to amount to a direction to acquit," while Darling J., in *R.* v. *Everest* (1909) 2 Cr.App.R. 116, 132, considered that a direction to acquit in such cases was "a rule which has long been established." In more recent years, in *R.* v. *Spencer* (1940) 4 Journal of Criminal Law 174, Croom-Johnson J. was apparently unaware of whatever authorities Darling J. may have relied upon in stating the rule to be well established, for the learned judge said that the court's insistence on corroborative evidence had increased in recent years and he took the responsibility of directing the jury as a matter of law that they must not convict without proper corroboration. Such a principle is patently a complete negation of the jury's right to convict even in the absence of confirmatory evidence, and cannot be accepted as correctly stating the law.

Court of Criminal Appeal's power to upset the jury's verdict

No analysis of the respective functions of the judge and jury in cases where an accomplice gives evidence for the prosecution would be complete without reference to the undoubted right of the Court of Criminal Appeal to upset the jury's verdict in certain circumstances. We are not concerned here with any misdirection in law by the judge, and it may be assumed that the trial judge has performed both duties, *viz.*, (1) that of warning the jury of the danger in convicting on the uncorroborated testimony of an accomplice, and (2) that of informing the jury of their right to convict in spite of the absence of corroboration. Notwithstanding the fulfilment of both these conditions, the Court of

Criminal Appeal may, under section 4 (1) of the 1907 Act, set aside the conviction if it thinks that the verdict of the jury either is unreasonable or cannot be supported having regard to the evidence. The latter alternative is seemingly an important safeguard but, in the absence of any reported decisions, it is difficult to believe that the court would readily interfere with the verdict on the ground of lack of corroboration. To do so would be to nullify the discretion of the jury which is so constantly stressed as being absolute in character.

Definition of an accomplice

Lord Simonds L.C., in *Davies* v. *D. P. P.*, was unable to refer to any earlier case in which a formal definition had been put forward as to the ambit of the word " accomplice " in this particular context. There appeared, therefore, to be two ways in which the House of Lords could have approached this problem of determining the class of persons who could be regarded as coming within the description of an accomplice. In the first place it could have examined the cases which had been decided hitherto in which certain individuals have been held to be accomplices, and then seek to deduce a meaning for the word from those decisions. Alternatively, it could have considered the underlying basis of the principles already discussed, which is essentially one of the credibility of the witness, and then given effect to this basis by laying down a sufficiently wide definition which would act as a safeguard against the too ready acceptance of testimony which is tainted and unreliable. The House of Lords chose to follow the former course with consequences which will become apparent when the respective categories are examined.

(1) *Persons who are participes criminis in the actual crime charged*

This category covers those persons who have been described earlier as " accomplices in the actual crime." They form the main class of individuals whose evidence needs to be treated with caution, and embrace (i) those persons who are principals or accessories in a case of felony, and (ii) those persons who procure, aid or abet or actually commit a misdemeanour. Once it is established that the person who turns Queen's evidence was himself involved with the prisoner in committing the actual crime charged his motives are naturally suspect, and this leads to his testimony being treated with suspicion and caution. Knowing all the circumstances of the crime, the accomplice is in a position whereby he can, with little difficulty, make convincing false charges against the prisoner. It is difficult enough to determine whether a witness is telling the truth or lying, but the need for caution is greater than usual in the case of a witness who was "in on the crime" and then decides to turn against his former confederate.

Whether or not a particular witness was *particeps criminis* in the actual crime charged will usually be decided by the witness either confessing to participating in it or by pleading guilty to the crime or by being convicted of it. If, however, the witness has never been arraigned or put on trial in respect of the crime involved, or has not confessed, a different situation arises. The judge may rule that there is no evidence that the witness was a participant in the crime charged, in which event he is not an "accomplice in the actual crime." Of course, the witness may well have been a participant in the wider sense of being involved in the transaction out of which arose the actual crime charged. Such an "accomplice in the criminal transaction" does not fall within the rules which have been discussed in this article, and his position will be considered later. Assuming that there is evidence on which a reasonable jury could find that the witness was an "accomplice in the actual crime," the issue whether or not he is to be regarded as such is left to the jury to decide. In such a case it is the duty of the judge to direct the jury that if they consider on the evidence that the witness was an accomplice, then it is dangerous for them to act upon his testimony unless it is corroborated, with the usual qualification of their right to convict in spite of his evidence being unconfirmed.

(2) *Thieves and receivers*

In two cases, *R.* v. *Jennings* (1912) 7 Cr.App.R. 242, and *R.* v. *Dixon* (1925) 19 Cr.App.R. 36, receivers were held to be accomplices of the thieves from whom they received goods on a trial of the latter for larceny. According to Lord Simonds in *Davies* v. *D. P. P.*, there are special circumstances to justify the extension of the primary meaning of the term "accomplice" to cover the case of receivers. As the Lord Chancellor rightly pointed out: "A receiver is not only committing a crime intimately allied in character with that of theft: he could not commit the crime of receiving at all without the crime of theft having preceded it. The two crimes are in a relationship of 'one-sided dependence'." It is uncertain whether the House of Lords in *Davies* v. *D. P. P.* intended this extension of the meaning of "accomplice" to be restricted to the case of receivers. It is suggested that the reverse situation, *viz.*, that of a thief being an accomplice of the receiver, should equally be treated as requiring the customary warning against accepting his evidence if uncorroborated. Such a case would arise in circumstances similar to those which existed in *Carter Patersons and Pickfords Carriers* v. *Wessel* [1947] K.B. 849.

Examination of the two cases on receiving, cited by Lord Simonds in *Davies* v. *D. P. P.*, indicates quite clearly that in neither instance was the Court of Criminal Appeal aware of the fact that it was creating an exception to what Lord Simonds called the primary meaning of an accomplice. Rather does it appear that the court in both cases considered that it was simply applying the general rule regarding the desirability of corroboration in the case of a witness who, by virtue of his receiving stolen goods, was himself tainted and guilty of wrongful conduct. Stated in a different form, it may be said that, although the thief or the receiver, as the case may be, is not necessarily an "accomplice in the actual crime" charged, both are "accomplices in the criminal transaction" out of which arises the charge of larceny and the charge of receiving, and it is on this account that their respective testimony must be treated with caution and requires corroboration.

(3) *Persons who are participes criminis in crimes similar to that actually charged*

Here we are concerned with the special field of other crimes committed by the prisoner which are similar in character to the crime with which he is at present charged. If in such circumstances a witness is put forward by the prosecution who was *particeps criminis* in such other crimes and whose evidence is admissible to prove, for example, system or intent, then the testimony of such a witness is treated as parallel with that of a witness who was *particeps criminis* in the actual crime charged. Consequently, it is necessary for the judge to warn the jury that it is dangerous to accept the evidence of the accomplice to the other similar crime without corroboration. An illustration of the application of this rule is to be found in the case of *R.* v. *Mohamed Farid* (1945) 30 Cr.App.R. 168. The accused was charged with manslaughter as the result of procuring an abortion. Evidence was admitted of two women who, on previous occasions, had consented to being illegally operated upon by the accused, and since these two women were *participes criminis* in the earlier abortions it was held necessary to warn the jury that they should be treated as accomplices even though, of course, they were not accomplices to the substantive crime charged.

(4) *Persons who are participes criminis in crimes other than that actually charged, but arising out of the same criminal transaction*

This was the exact situation in *Davies* v. *D. P. P.* where, it will be recalled, the witness Lawson was acquitted of the crime of murder but convicted of common assault. The difference between the conduct of the appellant Davies and the rest of the gang of youths, including Lawson, was the fact that, although all of them had been engaged in the affray and were, therefore, *participes criminis* to the crime of common assault, Davies alone had possessed a knife which he had used to stab Beckley, one of their opponents, to death. In the absence of any proof that Lawson, the alleged accomplice, intended or at least contemplated an attack with a knife, it followed that Lawson could not be held responsible for the death of Beckley. Lawson was not, in other words, an "accomplice in the actual crime" in the sense of being *particeps criminis* to the crime of murder. By restricting the necessity for warning to cases in which the witness is a principal or accessory in the actual crime charged, the House of Lords perforce was bound to hold that Lawson was not an accomplice to murder for the purpose of invoking the general principles enunciated above.

There can be no denying the correctness of the ruling that Lawson was not a principal in the second degree to the murder of Beckley. But there can be equally no doubt that Lawson was a tainted witness, in that he was criminally implicated in the affray out of which arose the actual crime charged, murder. Lawson was an "accomplice in the criminal transaction," but the House of Lords considered that in such a case there is no duty to warn the jury. However, as stated earlier, it would seem open to the trial judge, even in such a case, to warn the jury as to the desirability of corroboration. The important thing to realise is that in such circumstances there is no rule of law and no rule of practice which requires a judge to give this warning. If the judge chooses to do so it will be in the exercise of his general discretionary power to advise the jury.

Conclusion

At the outset of this article it was respectfully suggested that the authoritative definition of an accomplice, as expounded by Lord Simonds L.C. in *Davies* v. *D. P. P.*, is not entirely satisfactory. In laying down the principle that the " warning " rule is predominantly confined to accomplices to the actual crime charged, the House of Lords was compelled to treat as anomalies the cases of receivers and participants in similar crimes. Certainly, if the " warning " principle is to be restricted to those persons who fulfil the technical requirements both of the actual crime charged and of an accomplice to that crime, we may admit that there are special circumstances which justify the inclusion of the anomalous cases. If, on the other hand, it is recognised that the true basis of the " warning " principle is the safeguarding of the prisoner's interests against the too ready acceptance by the jury of testimony which is highly suspect, then the so-called " anomalies " do not require any justification for they merely illustrate the application of the general principle. The House of Lords has now laid down the law. In accepting the principles as stated in *Davies* v. *D. P. P.*, the opinion may be voiced that it is unfortunate to find another technical rule being introduced into a subject which does not lend itself to technical niceties.

International Criminology

By Jean Graham Hall, ll.m., *Barrister-at-Law*

The Fourth International Course in Criminology on the advances in the study and treatment of the offender has recently been held in London, organised by the International Society of Criminology with the support of UNESCO and the co-operation of the British Council. One of the interesting features undoubtedly was the differing philosophic attitudes of the members from the various countries in their approach to the problems discussed.

The Indeterminate Sentence

Indeterminate sentences, used apparently with great success in the Netherlands, Denmark and Sweden, were anathema to the majority of Englishmen. Traditionally, this country insists on the right of a person to know the length of time for which he is to suffer deprivation of liberty, before he serves his sentence. The difference in outlook can be posed in the question " Should a prisoner undergoing legal punishment be compared to a patient in hospital ? " A patient, when better, is considered cured, and discharged. The length of a person's stay in hospital depends on his individual needs. Cogent arguments were used by Scandinavian delegates to interpret this analogy in terms of varying lengths of prison sentences. These arguments failed to convince Sir Lionel Fox, chairman of the Prison Commissioners, that prisoners would settle down while serving indeterminate sentences.

Sir Lionel gave an account of preventive detention sentences under which selected prisoners earn twice the statutory remission for good conduct, thus serving a very much shorter sentence than that passed by the court. According to the evidence of prison governors this has a bad effect on discipline, while the prisoners regard the system with complete cynicism.

About 14 per cent. are recommended for this earlier release by the Advisory Board. Preventive detention is served in three stages. The first stage is by way of preparation, in a local prison, usually for about one year. The second and longest stage is served at Parkhurst. Here the men are in association during the whole of the day, and at useful work earn more money than ordinary prisoners. Those recommended by the Advisory Board for early release then proceed to the third stage, which commences in another part of the prison. Usually work is undertaken outside the prison walls. Special lectures assist to lay the foundations for discharge. After three months the selected prisoner may leave Parkhurst and go to Bristol, to live in a small hostel near the local prison. The prisoner works as a free man, returning to the hostel at night. With his wages he keeps his family, pays the hostel and retains £1 per week as pocket money. Any surplus goes into compulsory savings for release.

Preventive detention has only been operative as a method of treatment since April, 1949, therefore one can do no more than guess at the results. Over 1,000 men have already received this sentence.

Juvenile Court or Welfare Council?

Wide divergence of opinions also occurred on the question whether children, alleged offenders against the criminal law, should be charged in juvenile courts or be brought before child welfare councils. Mr. Basil Henriques, chairman of the East London Juvenile Court, stoutly defended the method of due process of law. He avowed that children had a great sense of justice and possessed rights which no social worker should be allowed to take away without a proper trial. He admitted a stronger case for welfare methods when considering children under fourteen years of age brought before the court as truants, beyond parental control, or being in need of care or protection. Nevertheless he adamantly maintained that juveniles who had offended against the criminal law should not be treated as sick children.

Swedish, Danish and Dutch members of the course doubted whether young children understood the court procedure and actually knew the difference between right and wrong. The English emphasis on the legal aspect of the situation was not conducive to an atmosphere in which the child's future could properly be considered. They insisted that the Scandinavian device of using administrative methods was infinitely superior to the English domination of the rule of law.

Mr. Henriques stuck to his plea of a fair trial for children and emphasised that no persons with legal training sat on

Swedish Child Welfare Councils, where possibly a child could be dealt with by such a council when in fact he had committed no offence.

Institutions for Juvenile Delinquents

Speaking of institutions for juvenile delinquents on the Continent, Mr. D. Q. Mulock Houwer, director of a children's home in Holland, explained that ancient institutions, enormous in size, based on stern discipline, were no longer considered good enough. A more human approach, characterised by a co-operative attitude was growing in all countries. Obviously there must be development of the child's personality, coupled with training to make him into a healthy, happy citizen. Only if we can find the heart of a child will he find the road to life. Throughout the Continent there continued a lamentable lack of trained group workers and case workers. However, there existed a heartening recognition that alternatives, such as hostels, or foster parents, could be provided to institutions, which were like coffins for children.

Social Workers in Prison

Mr. Hugh Klare, secretary of the Howard League for Penal Reform, also mentioned the need for more trained social workers in connection with the recommendation of the Maxwell Report that prison welfare officers should be appointed in local prisons.

Mr. Klare deprecated certain negative forces in local prisons, such as the slow tempo of life and the short working day, with neither the need nor the possibility of providing for oneself. These features form no basis of preparation for a return to normal life. The installation in every local prison of a trained social worker, Mr. Klare suggested, might help to alter the attitude of many potential recividists. He also put forward the idea that group discussion among the prisoners might help to dissipate much anti-social emotion.

In both Belgium and Holland every prison has a full-time social worker attached. Members of the course from these countries admitted that on their introduction they were met with considerable resentment from prison governors and discipline officers. Ultimately, the social workers in these prisons have become accepted as an integral part of the community, with very beneficial results.

The Use of Probation

The system of probation, probably more fully developed in England than in any other country, was described by two members of the service. Probation requires the maintenance of sympathy and understanding between the probation officer and the probationer, and between the probation officer and the court. The keystone to the probation officer's work still remains "to advise, assist and befriend." A good personal relationship is the basis of all success, and consists of social case work within the framework of the criminal law.

By no means all courts in this country make full use of probation, nor of the specialised treatment which can be used in conjunction with it. In comparison with pre-war statistics a decline has occurred in the percentage of those before all adult courts who are placed on probation. This does not mean that actual numbers of those who are given this "second chance" has fallen, merely that with the increase in crime there has not been a commensurate increase in the use of probation.

Success or Failure?

What in the field of human relationships constitutes success or failure? In the experimental science of criminology one should not accept easy solutions or generalities. There exists a constant need for research, and to attempt new ventures, as, for instance, has been done in this country with open prisons since the war. The immediate risk to the public must be balanced against the security which society gains in the long run.

Some recent researches described at the Fourth International Course will be discussed in a future issue of this *Review*. Sufficient at the moment to agree with Mr. Mulock Houwer that "Nothing is more useful than to compare one's own problems and difficulties with those of other countries."

Aspects of Forensic Science

By Wilson R. Harrison, M.SC., PH.D.

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Anonymous Letters

The investigation of a complaint of anonymous letter sending is not necessarily as difficult as it may appear as first sight when the investigator may be presented with a few sheets of manuscript, or what appears to him even more disheartening, typescript, with apparently millions of suspects in the population to choose from. However, such an investigation may very well call for the highest qualities of observation, deduction and patience on the part of the investigating officer.

The first step in any investigation is to gather as much material as possible, for while the chances of determining the author of a single anonymous letter may be good, where two such letters are concerned they are considerably more than twice as good. If a whole series of such letters written to different persons over a period of time becomes available, then the chances of a successful outcome to the investigation are immeasurably increased, so that upon receipt of a complaint of anonymous letter writing discreet inquiries should be made as to whether letters have also been received by neighbours, friends and relatives of the complainant.

Anonymous letter writers are rarely content with one effort, and if their victims appear to be unaffected and give no outward sign they are usually impelled to further efforts to produce a noticeable reaction to their spite.

Consequently, the victims should be warned to be silent and to appear unaffected for this has a double effect. In the first place the anonymous letter writer has been deprived of the satisfaction of observing any visible sign of the success of his misdoing and secondly he may be provoked to further extravagances which may lead to his undoing.

A note of how and when the letters were received should be made whilst the facts are fresh in the memory, as such data may prove of paramount importance subsequently when a suspect is being challenged as to his whereabouts and movements at significant times. Such a note may prove vital if, as is often the case, the person complaining is also the person responsible for sending the anonymous letters.

Once all the available letters and envelopes have been gathered together, they should be arranged in chronological order and slowly read *aloud* by the investigator. This is very important, as it serves to focus attention upon many points which may escape notice if the reading is silently done by eye. It is very effective when a series of letters is being considered because mixed styles and different-appearing handwriting may at first suggest that more than one person is involved, but when the letters are read aloud attention is focused less on the handwriting than on the style, tone, phraseology, choice of words and expressions which are all characteristic of the mentality of the writer. Such features are much less capable of concealment and disguise than is the handwriting. Consistency in such respects throughout a series of anonymous letters will allow little doubt to be felt that but a single author is concerned, and once this point has been established valuable information may be gained by the subsequent detailed examination of the handwriting throughout the series, as to the nature of the disguise adopted by the writer.

A large proportion of anonymous letters are written by those of unsound mind or who are suffering from incipient insanity. The main indications of the writer suffering in this way are the presence of incoherent phrases and sentences and the reproduction of matters which have little or no apparent relation to the main theme of the letters. It is when letters are read aloud that such characteristics are most forcibly brought to the notice of the investigator.

The style of writing often proves the most important indication of the mental outlook, experience and circumstances of the writer as it is very difficult to assume, for anonymous letter writing, a style which is consistently different from that usually employed. The use, and particularly the misuse, of capital letters, underscoring to secure extra emphasis, or the liberal use of inverted commas and exclamation marks should be noted, because there is a high degree of probability that similar habits will characterise the normal letters written by the author. Associated with such extravagances are usually found irony, sarcasm, and maybe the frequent rhetorical question.

Taken as a whole, such features serve to build up in the mind of the investigating officer a fairly accurate picture of the personality of the writer, and straightaway this serves to eliminate from suspicion all those possible suspects whose known character is inconsistent with this picture. It must be emphasised that reading by eye is no substitute for the slow deliberate reading aloud in this preliminary phase of the investigation.

When the anonymous letters have been read aloud once or twice they should be studied with a view to classification by virtue of their motive. Associated with this is the attempt to discover the provocation which gives rise to them.

Many anonymous letters appear to have been written with no motive which can be recognised by any person of normal intelligence, and in many other cases it is difficult to discover any purpose which the writer thinks he has served.

Again, the provocation given by the recipient who is abused in an anonymous letter may be so slight as to be unrecognisable as such by any normal mind, but the effort to discover it from the context of the letters should never be neglected, as once brought to light it will provide a short cut to the discovery of the writer of the letters.

TYPES OF ANONYMOUS LETTER

With the exception of those letters written by persons of unsound mind, all anonymous letters are written with some end in view. Whilst this purpose may be obvious in many cases, *e.g.*, blackmailing letters demanding money, there are other cases in which the purpose of a single letter is difficult to determine and it is only when a series is taken as a whole that light is thrown on the intentions of the author. The following classification from the motive standpoint will be found to cover the majority of anonymous letters.

Blackmailing Letters

It should not be assumed that because a letter contains a demand for money that blackmail is intended. The writers of a substantial proportion of letters demanding money do not expect to receive anything in the way of financial gain. Very often their sole motive is to frighten their victim. They wish to cause fear and annoyance rather than to gain financially. A truly blackmailing letter contains:—

(a) a demand for a sum of money or other reward which is apparently well within the capacity of the victim to pay;

(b) practical instructions whereby the money is to pass from the victim to the writer of the letter;

(c) a hint at least of the reason why the victim should be called upon to pay over the money; or

(d) a threat to ensure compliance on the part of the victim.

Most genuine blackmailing letters often contain promises that no more money will ever again be demanded. These are included with a view to reinforcing the effect of the threat and also to persuade the victim to comply with the demand rather than resist it and possibly complain to the authorities.

Often there is put forward some excuse for the action of the writer who is at pains to explain that he is not a blackmailer, and occasionally there is an offer to regard the payment as a loan which will be repaid at some future date.

If a really exorbitant sum far beyond the resources of the victim is demanded and there are no instructions which can be taken seriously as to how the money is to be paid over then such a letter cannot seriously be considered to be blackmailing. It has either been written by someone of unsound mind or, more likely, with intent to annoy or frighten. An appreciable proportion of such apparently blackmailing letters has been written by the recipient. These letters are considered below.

Threatening Letters

A clear distinction must be drawn between threats which are real and which are intended to terrorise and those which are impracticable or which are intended to annoy or to allow the writer to " let off steam " by making threats which he has neither the power nor the intention of carrying out.

Occasionally, such letters are written with fairly clear indications as to the apparent identity of the writer. It is wrong to jump to conclusions that these clues have been included inadvertently. More often than not such letters have been written by a third party with the intention of calling down police action on to someone they wish to harm by having them accused of a crime of which they know nothing.

Apart from blackmailing letters, threatening letters, where the writer intends to and is in a position to carry out any appreciable proportion of his threats, are rare. Incidentally, prosecutions for sending letters threatening to kill are rarely successful, for although the authorship of the threatening letter may be proved beyond doubt, it is very difficult indeed to convince a jury that the threats are genuine and not merely intended to annoy. Letters containing genuine threats usually afford little difficulty in tracing the writer as the field of choice is necessarily very limited, and in the majority of cases the recipient is all too well aware of the source of the threats.

Letters of Revenge

These letters form an appreciable proportion of anonymous communications and include "tip-off" letters sent to the police, customs officials and the Commissioners of Inland Revenue, as well as to heads of firms and other persons in authority. Almost invariably these letters refer to the wrongdoing of third parties although, occasionally, the victim of the accusations is written to and informed that this course is being taken. The threat to send such letters is often used in blackmailing letters.

The information given in such letters may be true; there may be allegations which have some basis in fact, or the whole may be a tissue of lies. When information is given which has a basis in fact or which the writer believes to be true, then the motive is usually one of revenge for insults or imaginary slights.

The field of investigation in such cases is wide, but a consideration of the information contained in the letters usually serves the investigation. Accurate information which is discreditable to anybody is usually known to members of a very limited circle. Care must be taken not to narrow the field of investigation too much, because it often happens that such information may be accidentally picked up by someone who normally would not be expected to share it.

When the accusations in the anonymous letters are not true and from the tone of the letters it is concluded that they are probably known to the writer to be completely erroneous, then the motive is to cause nuisance and embarrassment to the victim by having his affairs or behaviour made the subject of scrutiny by the authorities.

Jealousy is the prime reason for the writing of such letters. The junior clerk who has been passed over for promotion or the workman who is rebuked by the foreman, obtains his revenge by writing to the head of the firm anonymous allegations of theft or other malpractice against his more fortunate rival. Similarly, jealousy of apparent sexual success inspires the majority of letters which are written to friends and relatives of the successful rival.

Once such a motive has been established the task of discovering the author of such letters is very much simplified and it often happens that the writers of such letters can be identified merely by careful reading. The victim of the attack may be vilified in unmeasured terms, and to make this misbehaviour even more marked a contrast is often made between these actions and the purity of those of someone else who receives both praise and sympathy from the writer, who almost invariably professes to be but slightly acquainted or even unknown to this person. Usually, once the identity of this person who is the subject of sympathy and praise has been established, nothing further need be done to name the author of the letters.

Letters of Recommendation

In some cases of what are apparently letters of revenge, the allegations of wrongdoing are stated in such general terms and are applied to so many different persons that the true object of the letters is not what it at first appears to be—to seek revenge—but actually to have the letters serve as a recommendation of persons whose good character is high-lighted by the disparagement of others. The source of such letters is not difficult to determine, but it must be borne in mind that the husband, wife, or other near relatives of the central character may be responsible for the actual writing of the letters.

Sexual motives often lie behind the writing of many anonymous letters. Where the authors desire persons of the other sex they apparently achieve some peculiar satisfaction by writing letters to a number of people, themselves often included, which accuse the desired persons of having sexual relations with the writers.

Whether the act of writing such accusations, even if untrue, as they usually are, gives any satisfaction or whether the writers merely hope to gain the attention of the desired person must be left to the psychiatrist, but once the motive is realised discovery of the writer soon follows.

It is a variant of this type of letter containing accusations of having a " crush " on instead of actual sexual delinquency which plagues the upper forms of girls' schools, and the recognition of the type of letter which is being dealt with is a necessary preliminary to the often difficult task of establishing their authorship.

Spiteful letters

The majority of anonymous letters are actuated by malice and spite because it is this form of communication which affords an excellent opportunity whereby one who is the object of hatred may be injured in reputation, abused and annoyed with apparent impunity. These letters range from the merely abusive to the grossly libellous and are responsible for much ill-feeling especially in small closely knit communities. They may be recognised for what they are at first reading, and it is a melancholy fact that practically all are written by middle-aged women. The authorship of such letters is usually the most difficult to establish as the subject-matter may afford little clue to the perpetrator. The inclusion of the foulest and most abusive language should never justify the restriction of the field of enquiry, for many such letters have been proved to have been written by the most unlikely persons, the majority of whom would usually be considered to be completely ignorant of the foul expressions used.

Letters Written by Persons Maligned

If a series of anonymous letters is concerned in maligning the character of but a single person, the possibility of this person being the author should never be lost sight of even if the victim cannot possibly be imagined to be guilty of the offences charged, or to be acquainted with the obscene language often used. Whatever may be the reason which impels the writing of such letters—desire to be the centre of attraction or the object of sympathy or merely unsound mind—the possibility of this being the case should invariably be borne in mind if the recipient is a woman, and steps should be taken to eliminate the central figure before seeking further afield for the author.

Occasionally, letters containing threats to rob or to burn are written by the recipient with a view to averting suspicion and to rendering plausible a future crime such as arson or robbery which the apparent victim contemplates staging himself to cover defalcations or bad business investments.

Miscellaneous

A proportion of anonymous letters are either completely illegible or so incoherent as to be the obvious production of disordered minds, whilst others leave no doubt on reading that the writer is suffering either from delusions or megalomania. With such clues available the determination of the writer is usually a matter of narrowing down the range of possible authors to those exhibiting symptoms of mental disorder.

A complication of an investigation of anonymous letter writing is the proneness of some who receive anonymous letters to be stung into writing anonymous letters on their own to those whom they rightly or wrongly—usually wrongly—suspect as the author of the original communication. Such "snowballing" complicates the investigation especially if members of one family are concerned for these often have had much the same educational opportunities and are aware of a large amount of information common to all; they have friends and acquaintances in common and very often the handwritings of members of one family are of marked similarity.

The anonymous letter written as a practical joke may be harmless in itself, but it may provoke an unbalanced recipient into writing others which are by no means harmless, and what was originally intended as a rather stupid piece of fun, may set in play passions of an intensity never anticipated by the original culprit.

Another type of anonymous letter usually appearing in the course of an investigation is that written by the author to himself or about himself. Once inquiries seem likely to place the guilt where it belongs, further letters often refer to the investigation and to accusations of which only the guilty person can know and they invariably declare, in unmistakable terms, the complete innocence of the suspect. The discovery of such letters, once an inquiry has begun, must be regarded as encouraging evidence that it is being prosecuted in the right direction.

One class of anonymous letter which almost invariably holds little hope of detection is that received by those who have been the subject of publicity in the national press. These pour in from unbalanced persons and from busybodies everywhere. The authors rarely know the recipient personally. The range of suspects is very wide.

Such letters follow curiously similar lines of thought so that little can be learned from their context. The investigation of such letters is rarely followed up and they are best consigned to the waste paper basket.

A most important class of anonymous letter comprises those which accompany the empty handbags or personal papers which are often returned by post either to the police or to the loser, by the thief.

These letters vary in context; they are usually sent by the "amateur" thief possibly with a view to putting the investigator of the theft off the scent. That this trick rarely serves its purpose is well known and indeed many such thieves have been tracked down and convicted, largely by the evidence obtained by comparing their handwriting with that of the letters.

The writing on the wrapper of the parcel is most valuable in these investigations and all wrapping papers should be reserved for laboratory investigation because sometimes these yield valuable clues as to their origin.

Many thieves feel impelled to leave behind them at places they have broken into, messages to the police or to the owner of the property. Occasionally such messages threaten those who have been robbed of large sums of loose cash that any complaint to the police will bring down upon them the attentions of the Commissioners of Inland Revenue. More usually, however, these messages are indicative of high spirits on the part of the thieves, but whatever the motive for writing them they often help to convict their authors.

Analysis of Contents

Once the letters have been examined with respect to motive further evidence as to their authorship may be gathered with respect to such matters as the sex and age of the author, social background, etc.

Sex of Author

There is no infallible method of determining the sex of the writer by examining either the style or the structure of the handwriting. For this purpose it is necessary that the contents themselves be studied. As has been mentioned earlier, the use of foul language or of the coarsest and most obscene expressions does not necessarily mean that letters such as these were written by an uncouth member of the lowest classes. Many such letters have, on investigation, been proved to have been written by women, hitherto universally considered to have been ladies of gentle upbringing and quite unacquainted with the existence of the filthy expressions so lavishly used in the letters.

Experience has shown that the majority of anonymous letters whose motive is spite and jealousy are written by women. Typical inclusions which indicate that such letters were written by women are abuse of other women for—

(1) exhibiting themselves or dressing and making up so as to attract masculine attention, and

(2) keeping a dirty house and neglecting their children. Such letters often offer priggish advice as to conduct and almost invariably quote unfavourable opinions concerning the person addressed, supposed to have been uttered by third parties.

Statements that the writer is a man or woman are often included in anonymous letters and, though usually but not invariably incorrect, they afford little help in determining the sex of the writer. Sometimes anonymous letters are received in monthly cycles and this may indicate the sex of the writer, but such a test can obviously be applied only if a large number of letters are sent over a long period of time.

Age

This is a most difficult feature to establish from the context of anonymous letters for whilst the young and immature person is unlikely to be the author of letters which exhibit mature arrangement and logical development of a theme, the reverse is not necessarily true.

Some elderly persons who normally can command a flow of verbal expression, often become tongue-tied when a pen is placed in their hand and the writings of many elderly persons who are passing through the first stages of senility often portray some of the immaturities characteristic of the adolescent.

The adoption of a querulous and censorious tone may be regarded as a fairly certain indication that the youth of the writer is passed, but apart from this, few reliable indications of age may be obtained from the most careful study of anonymous letters. The handwriting usually affords little help except that a handwriting which is highly developed is very unlikely to be that of a young person. The reverse is by no means invariably true.

The majority of anonymous letters are the work of women who are at the change of life, but owing to the wide range of ages during which this phenomenon occurs in different persons its evidential value is small.

Social Circle and Occupation of Writer

Intelligent reading of series of anonymous letters with special attention paid to names of persons, places and events, almost always leads to a fairly accurate assessment of the social circle in which the writer moves.

The correct use of specialised and technical terms, should they occur, must be regarded as a most valuable pointer in this direction. Phraseology and mode of setting out may also prove a valuable clue if a member of a specialised group such as a police officer, member of the armed forces or municipal servant, all of whom are accustomed to writing reports and letters in a conventional manner, can be regarded as a likely suspect.

Nationality, Racial or Religious Groups

Occasionally, a series of anonymous letters may be found to contain phraseology, terms, motives and expressions which are characteristic of special groups within the community. This is especially true where religion is concerned.

Persons of strongly emotional natures coupled with a certain degree of unbalance often attach themselves to what might be termed extreme religious groups and the anonymous letters they write often betray the strong religious convictions of their authors.

Members of minority groups are often very sensitive to what they conceive to be discrimination against them or persecution on the part of the majority. Letters written in protest by such people are often coloured by the phraseology and complaints which are common to minority groups the world over.

Probably the most reliable indication of nationality of the writer is obtained through examination of the handwriting. Most persons educated in the United Kingdom have been taught the semi upright or Civil Service handwriting, a development of the old English round-hand. This is characterised by the presence of shading, curved connecting strokes and relatively wide separations between the individual letters.

In the United States of America, a number of handwriting systems are taught, but the most common employ little or no shading and angular connecting strokes. The design of certain of the letters differs from that used in the United Kingdom.

On the continent of Europe the handwriting of the different countries is much different in appearance from that used in England. The design of many of the letters is also characteristic of the country.

Family

Many bitter anonymous letters are written to closely related members of the same family. These often betray this by their intimate knowledge of family affairs, particularly financial arrangements unlikely to be known to an outsider. The recipients of such letters are often all too well aware of their source, but where faults exist on both sides, they often conceal valuable information from the investigating officer. Whilst they are quite willing for the letters to be the subject of a police investigation which they hope will frighten the writer, they are sometimes the reverse of frank about their suspicions owing to unwillingness to have family dirty linen washed in public.

Education and Personal Qualifications of the Writer

Once a series of anonymous letters has been studied in accordance with the foregoing, a fairly exact estimation of the educational qualifications of the writer should have been built up in the mind of the investigator, in spite of any steps which might have been taken by the author to disguise his true educational status.

Whatever disguise has been attempted, it is obvious that no-one can assume for the purpose of anonymous letter writing a higher standard of coherence, expression, phraseology, grammar and skill in the selection of the correct word, than is normal to the writer. On the other hand, illiteracy by the adoption of coarse and obvious mis-spelling is frequently assumed by the literate as a disguise.

The best test for disguise in this direction is that of consistency. In the first place the consistently correct spelling of words often wrongly spelled is quite inconsistent with the crude mis-spelling of the simplest words so often found and the use of a small "i" for the personal pronoun—a favourite disguise—should never be taken as an indication of the illiteracy its unconscious adoption would indicate.

Again, the use of expressions such as "I is" and "you is" is inconsistent with correct punctuation and the appropriate division of the written matter into paragraphs which is one of the best criteria of literacy. Furthermore, the correct division of words at line endings is inconsistent with other crudities which may have been inserted as disguise.

The method of setting out the address on the envelope should invariably be considered as it may be seen to be in marked contrast with the crude arrangements of the letter itself. Experience has shown that written matter on envelopes is rarely disguised as thoroughly as the contents of envelopes. Envelope addressing becomes a routine matter with the literate. Added to this there is always the fear that a crudely disguised address may result in the letter failing to reach its destination. This is one of the reasons why the envelopes and the wrappers of anonymous communications should always be preserved with care.

The quality of the handwriting usually affords little indication as to the educational status of the writer except that a fluent developed handwriting is not likely to be possessed by persons who are unaccustomed to doing much writing. On the other hand, a crude handwriting may be possessed by someone of the highest educational advantages. That many professional men write badly is only too true.

Whilst the above-mentioned tests may be applied by anyone who is confronted by one or more anonymous letters, the further examination is best conducted in a laboratory specially staffed and equipped for the scientific examination of the documents.

Here a number of tests will be applied to the paper and possibly the ink in an endeavour to discover evidence of origin such as watermarks, erasures, impressions and odours. This is usually accomplished with the aid of special lighting allied with a wide range of photographic procedures.

Experience has shown that if an investigation is rigorously pursued and full advantage taken of the results of laboratory examination, the majority of serious cases of anonymous letter writing may be traced back to their authors.

Revenue Frauds at Common Law

By "Clericus"

The current edition of Archbold's *Criminal Pleading, Evidence and Practice* describes, at the end of a chapter entitled "Offences Against Public Justice," a number of crimes akin to perjury. Some of these offences are laid down in the Perjury Act, 1911, some in other statutes and a reference is made in Archbold to an offence, which, laid as it is under the common law, combines new and old in a striking way. For whilst its most frequent modern instance arises in connection with income tax, its foundation is in a principle said to have been recognised in the reign of Edward III. A fraudulent omission to account to the King for 100 marks levied for the array of some archers was then held indictable (Y.B. 27 Ed. III, pl. 17); in present-day conditions a basically similar offence is committed by a person who, with intent to defraud, makes a false statement or representation tending to prejudice Her Majesty the Queen and the public revenue.

Now most income tax forms which come the way of a taxpayer to fill up include a declaration whereby the taxpayer or claimant for relief is intended to vouch the correctness and completeness of the information which he gives. For all that this may be a declaration contemplated by the Income Tax Acts, it is not a statutory declaration such that a false statement in it is capable of constituting an offence against section 5 (a) of the Perjury Act, 1911, because section 15 of that Act defines a statutory declaration as being one made under the Statutory Declarations Act, 1835—a form of oath. The generality of taxation documents do not yet require supporting on oath. Accordingly section 5 (a) is not applicable, so that, for one thing, the power given by section 19 of the Magistrates' Courts Act, 1952, to deal summarily with certain offences under the Perjury Act, 1911, does not extend to charges based on incorrect income tax documents. If, however, the document in question is one which has been called for by an Inspector of Taxes acting in pursuance of the Income Tax Acts (as, for instance, in most cases the normal form of annual return is called for) or one which the Acts authorise a taxpayer to complete (such as a claim for relief or for repayment of tax) then, if it is in fact rendered by the person required or authorised to do so, and if it contains a materially false statement knowingly and wilfully made, it is usually possible for the Revenue to lay a charge under section 5 (b) of the Perjury Act, 1911, on the footing that the form is a document which the maker is authorised or required by statute to make. There will have to be such evidence of the falsity as will satisfy section 13 of the Perjury Act, 1911. This is an exclusively indictable offence; a summary offence covering similar circumstances (carrying, however, the right to elect for a jury) is provided in section 505 of the Income Tax Act, 1952, but this is subject to the general six months' time limit for commencing summary proceedings and the falsity may not be detected within the six months.

Standing by themselves section 5 (*b*) of the Perjury Act, 1911, and section 505 of the Income Tax Act, 1952, do not cover the whole field of Revenue crime. To begin with, false statements may occur in a document which is not covered by either section—a set of business accounts, for instance, submitted to the inspector in support or in lieu of a return. Again, responsibility for the falsity (whether in a section 5 (*b*) document or not) may lie, not with the person authorised or required to make the claim or return, but with an accountant or clerk who has either made the false statement himself as an agent or servant, or has led his client or master to make it. As an example of this situation there may be cited the case of a cashier who pays his master's workmen the correct net amount for wages but enters on the tax deduction card which the employer is required to maintain under the Pay-As-You-Earn system figures representing a lesser sum. These are typical of the circumstances in which the prosecution has, in many Revenue cases, indicted the offender, be he accountant, pay clerk, or the taxpayer himself, of the common law misdemeanour noted in Archbold.

East's *Pleas of the Crown* has a section at p. 821 of Vol. 2 on Cheats in Matters of Public Concern. The learned author cites two instances in support of the broad statement that "all frauds affecting the Crown and the public at large are indictable": *Treeve's Case* from the manuscript of Buller J. tried in 1796, and *R.* v. *Jones* (1777) 1 Leach 174. The former shows that to supply to the King's prisoners of war victuals unfit for human consumption is an indictable offence, if done for gain or from malice or deceit; while the latter deals with a case of what would now be called fraudulent enlistment. A good deal nearer home in regard to its circumstances is the case of *R.* v. *Bembridge* (1783) 22 State Trials 156. The defendant had been an accountant in the office of Lord Holland (the father of Charles James Fox) when the latter was Paymaster-General of the Forces, and, when Commissioners were appointed to investigate the Paymaster's conduct of his office, he had concealed from them information which would have led to the discovery of large sums of accountable money. He was charged with this wilful concealment and a full court of the King's Bench held the indictment good. Lord Mansfield described Bembridge's conduct as a breach of trust or fraud or imposition in the subject as between the subject and the public. He said that as that was a matter which affected the King and the public it was indictable, although as between subject and subject it would be only a civil matter.

In order to see how this principle fits in with the mechanics of modern taxation one had best look first at an important ruling given by Bray J. at Winchester Assizes in the Summer of 1920. Two defendants, A. H. Bradbury and C. E. Edlin, were indicted before him on several counts relating to their income tax, excess profits duty and super-tax affairs. In the indictment were counts charging the defendants with the offence of making false statements tending to prejudice His Majesty the King and the Public Revenue with intent to defraud His Majesty the King contrary to the common law. In some counts the particulars alleged the making of false returns, and in some the delivery of false balance sheets and trading and profit and loss accounts. Several objections were taken to these counts in the indictment, the most fundamental being that there was no such offence known to the common law as that charged.

This objection was answered by the prosecution by reference to the authorities just cited, *Bembridge's* case in particular. Bray J. held that the charge before him was within the same class of case. Characteristically, he declared that it had struck him that if what was charged was not an offence it was quite time it was made so. " But the common law of England is based on common sense, and it seems to me to be eminently in accord with common sense that when a person commits an offence of this kind, and makes a false statement with a view to prejudicing His Majesty's revenue, it ought to be punishable."

It had been further objected that section 178 of the Income Tax Act, 1842, which was still in force in the years covered by the charges in *R.* v. *Bradbury & Edlin*, and of which the modern reincarnation is section 48 (1) of the Income Tax Act, 1952, operated in substitution for the common law offence, either wholly, according to one argument, or, according to another, so far as returns for Income Tax purposes were concerned.

This section provided a specific monetary penalty, chargeable on proof of the facts to the General or Special Commissioners, for false or fraudulent statements whereby income tax is avoided. Counsel for the Crown pointed out that these Commissioners are not a judicial authority, nor do they administer the criminal law, and that section 178 did not create a criminal offence. Bray J. was scornful of the suggestion that section 178 repealed the common law of England. "In my opinion it certainly did not. It added an additional burden or obligation if you like, but it never did take away the right to proceed against an offender by indictment under the common law of England, and therefore these objections fail." It may perhaps be interpolated that a similar argument of supersession of the common law by express statutory provision was urged in *R.* v. *Mosley*, Leeds Assizes, April 25, 1951, based on section 227 of the Income Tax Act, 1918 (see now section 505 of the Income Tax Act, 1952), which certainly creates a criminal offence. Ormerod J. then said that he knew of no rule which entitled him to hold that this section had swept away the common law offence.

The defendants Bradbury and Edlin were convicted and appealed to the Court of Criminal Appeal, but other charges were involved, and in the view which the court took of these other charges it was not necessary for it to deal with the common law counts. In fact, although three days were occupied before the Court of Criminal Appeal, the objection to the common law charges was not argued at all in that court and discussion of it was expressly avoided in the judgment of the court delivered by the Earl of Reading C.J. at [1921] 1 K.B. 565.

While the express approval of the Court of Criminal Appeal was thus never given, charges of common law misdemeanour in Revenue cases have been laid with increasing frequency, and no objection against the form of the charge has ever been upheld or, since *R.* v. *Bradbury & Edlin*, carried to appeal. One of the cases in which objection was taken is reported from

Northern Ireland. *R.* v. *J.* [1933] N.I. 73, though not binding as an authority on the courts of this country, gives us in its report as convenient a summary as any of the essentials and history of the offence. Andrews L.J. was presiding at the Belfast City Commission when there came before him a case in which it was alleged that the defendant had fraudulently and falsely understated his total income in a super-tax return. There were no counts other than common law ones in the Bradbury and Edlin form, notwithstanding that statutory returns were in question, for the good reason that there never has been a Perjury Act in Ireland, Northern or Southern.

Counsel for the defendant moved to quash the indictment. The point was taken that the defendant was a private individual, not a public official, as had been Bembridge. And the old argument based on the penalty and summary conviction provisions was adopted. Andrews L.J. upheld the indictments as a modern illustration of an old principle. He stressed that, so far from taking away the Crown's common law rights, the Income Tax Acts had expressly preserved them. His lordship referred to section 224 of the Income Tax Act, 1918, a saving provision declaring that the 1918 Act should not affect any criminal proceedings for any felony or misdemeanour. This saving provision is re-enacted in the 1952 Act (section 503) with the interpolation of the words " save so far as is otherwise provided," an addition clearly necessary to meet new Revenue law enacted after 1918 and now consolidated, *e.g.*, the evidential provision in section 34 of the Finance Act, 1942 (section 504 of the Income Tax Act, 1952) and the requirement in section 468 (11) of the 1952 Act of the Attorney-General's consent to the institution of certain proceedings of a special kind.

So far as English proceedings are concerned, the utility of the common law charge is most obvious in cases where the Perjury Act, 1911, is not applicable, which is not to say that it lies only in such cases. Thus it has been laid where the circumstances warranted a charge under section 5 (b) of the Perjury Act, 1911, but corroboration of the alleged falsity was not available (*R.* v. *Bell*, London Sessions, December, 1952). *R.* v. *Bradbury & Edlin* shows its application to the delivery of false accounts. Other cases outside the scope of the Perjury Act, 1911, have concerned fraudulent misstatements in less formal but material documents, such as a certificate of full disclosure or a statement of capital assets, either of which may come to be given to the Revenue in the course of the investigation of taxation irregularities (*R.* v. *Ball*, Leeds Assizes, Autumn 1951). And as was indicated earlier in this article the common law charge facilitates the prosecution of dishonest employees who engineer the falsification of P.A.Y.E. records and returns which they themselves are under no statutory duty to maintain or render.

In all cases an intent to defraud is an essential element in the common law offence. The corresponding ingredient in a contravention of section 5 of the Perjury Act, 1911, is that the false statement shall have been made knowingly and wilfully—morally, it is often thought, a lesser impeachment, but often amounting as a matter of evidence to much the same thing. At all events, it is not easy to think of a wilfully false statement made on a material matter to the Revenue where it is not apparent from the circumstances that it was made with intent to defraud. Given such an intent, false statements made to the Revenue constitute a clear exception to the generalisation that it is no crime to tell a lie.

A Day in a Police Court

By A. E. JONES
Magistrates' Clerk

The series of which this is the fifth instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

The Liberty of the Subject

Charge No. 9, like No. 8, the bookmaker's look-out, was one of wilfully obstructing a police constable in the execution of his duty, but there the resemblance ended. James Burns came through the prisoner's door bristling at the assistant gaoler's hand on his arm. He stood in the dock, a wiry, white-haired little man with fierce blue eyes, and glared aggressively at Mr. Sutterthwick, the magistrate.

A lanky, twisted figure with jutting brow and chin rose in counsel's seat and said in a strident, creaking voice "I appear to defend, sir. We plead not guilty." That "we," as Mr. Parncible knew, was most gratifying to a lay client. It suggested a champion who identified himself with the cause for which he fought instead of merely adopting it because it was the job he was paid to do. It was an old forensic trick, but most of Mr. Parncible's forensic tricks were old ones and most of his stock in trade consisted of forensic tricks. At the age of sixty-two he was still existing on a small private income and taking occasional two-guinea briefs in the police court. For these cases he had the attraction from the point of view of instructing solicitors that his fee was not beyond the purse of humble clients and, as he had so few engagements, he could appear in court at short notice.

The policeman's story

As presented by the police, James Burns's case seemed to offer little scope for advocacy. The evidence of the prosecution, even though given at the pace made necessary by the clerk's note-taking, occupied barely three minutes. The arresting constable had been posted at the entrance of Elm Grove, across which, the previous night, a large tree had fallen, completely obstructing it. Workmen had arrived and were engaged in removing the obstacle, and the officer had been instructed to keep the street clear for them. At about 9.15 p.m., he deposed, the defendant came along and attempted to go down Elm Grove. In reply to the officer's inquiry Mr. Burns stated that he did not wish to visit anyone in the street but was just going home. Thereupon he was told that he could not get through that way, and was given directions for a short detour. But he insisted that Elm Grove was his quickest way home and, tree or no tree, that was the route he meant to take. " A crowd began to collect " continued the constable " and I told him three times that he must go the other way, but he persisted in refusing and he tried to push by me so I had to arrest him. He made no reply when he was formally charged," concluded the officer.

Under cross-examination

The cross-examination on this took fourteen minutes and, as very little relevant evidence emerged for Frell to make a note of, it was allowed to proceed at a fairly brisk pace. To begin with, counsel attacked the constable on the time he gave for the defendant's first approach. Mr. Parncible said his instructions were that it was 9.5 not 9.15. However, to all his most creakily indignant " I put it to yous," he got nothing but a stolid " No, sir " from the witness. After enduring this patiently for a while, Mr. Sutterthwick inquired tartly whether it mattered anyway, to which Mr. Parncible retorted with dignity that it went to the credibility of the officer who, if he could be mistaken in one detail, could obviously be so in others. But the hint was taken and counsel proceeded to a fresh point. He took exception to the policeman's statement that a crowd began to collect.

" Nobody else was there at all," were Mr. Parncible's instructions, and after chasing this hare vigorously through a labyrinth of questions, he emerged triumphantly with an admission by the witness that there might have been less than twenty, the officer didn't count them, it might have been only twelve, but it certainly wasn't as few as six. " I had enough to do dealing with the prisoner without taking a census," protested the constable, warmed by the verbal duel into a temporary lapse from the correct official attitude—a lapse which counsel promptly claimed as a sign that the officer wasn't taking the matter seriously. However, the policeman quickly resumed his impassivity and returned a steady denial to Mr. Parncible's further suggestions—each of which was made several times over in slightly different words—that the defendant had not been informed of an alternative route, nor arrested because he attempted to push his way past the officer.

Mr. Parncible continued to press his attack and the interrogation took a new turn with " Didn't he come to you and say he wanted to get home quickly as his wife was ill and didn't you straight away push him back with a most abusive expression and when he remonstrated didn't you promptly arrest him without any more ado? "

" That's hardly *a* question, is it? " queried the magistrate. " Hadn't you better split it up a little? "

" As you please, sir," responded Mr. Parncible grandly, and turning to the witness, he said " Didn't he tell you his wife was ill? ".

" He didn't say anything about that till we got to the station."

" I put it to you he gave you that on the spot as the reason for his wanting to get through."

" No, sir."

" Well, we shall see," remarked counsel darkly, and fired his next shot : " Didn't you push him violently away and use some very foul language to him? "

"No, sir. Certainly not. He tried to push me aside, as a matter of fact," was the rather nettled reply.

"What!" creaked Mr. Parncible, "You seriously suggest that? Just look at the size of him. What chance would he have of pushing you aside? He's an elderly man, too, if he doesn't mind my saying so."

"I can't help that, sir. That's what he tried to do, and he said 'Get out of my way, you bloody bastard.'"

"I put it to you he said nothing of the sort," said counsel with a fine show of indignation. "You didn't say that in your evidence in chief."

"No, you've brought it out yourself," said Mr. Sutterthwick.

"Why have you only just thought of it?" persisted Mr. Parncible to the constable, taking no notice of the magistrate's interruption.

"I haven't only just thought of it. I told the station officer and made a charge of using obscene language, but he wouldn't take it."

"Quite right. It isn't obscene, though it may be very offensive," remarked Mr. Sutterthwick who, in spite of the speech forms he was accustomed to hear, was something of a purist in the use of words.

"I suppose it's almost regarded by some people as drawing-room language nowadays, sir," put in Mr. Parncible with ponderous jocosity. "Did you make a note of it in your notebook?" he went on to the officer.

"No, sir. Not as the charge wasn't taken."

"Oh, I see," sarcastically, "You only make a note of anything that supports a charge?"

"I take a note of all that's relevant," replied the officer with official rectitude.

"Oh, do you. We'll see. Let me have a look at your notebook."

"I'm afraid you can't ask for that, Mr. Parncible," interrupted the magistrate. "The constable hasn't referred to it while giving his evidence. I was very glad to notice that he didn't. It may be necessary in long and complicated inquiries, but it shouldn't be in a simple case like this which only happened last night. The practice of relying on notebooks tends to make the police feel that there can't possibly be a mistake in what's written down and that what isn't there in black and white couldn't possibly have happened."

"I agree, if I may say so, sir. But surely I'm entitled to see the note the constable took of my case in his official notebook," persisted counsel.

"Not if he hasn't used it in the witness box. It's nothing more than a private memorandum then, so far as the court's concerned."

"As you please, sir," said Mr. Parncible in very unconvinced acquiescence. Turning back to the officer he said sharply "Well, anyway, whatever you've got in your notebook I put it to you that the defendant never used any bad language at all, but that you, on the contrary, used some most obscene expressions to him."

"No, sir."

"Didn't you say 'You . . . off or I'll . . . well take you down the road?'"

"No, certainly not," said the constable indignantly.

"Silence!" called Sergeant Quing, the warrant officer, to the sniggerers at the back of the court.

After this effort Mr. Parncible's cross-examination faded into an anti-climax of "I put it to you that that was the whole cause of the trouble—your behaviour to him and his resentment of it." But he sat down feeling that he had given his man a pretty good show. And, indeed, most of his clients liked their advocate to roast the police a bit, and whatever their ultimate fate, they were satisfied that their money had been well spent if they had heard a vigorous attack made on the honour and integrity of the "Force."

Further police evidence

The next and only other witness for the prosecution was a patrolling constable who, according to his evidence, came on the scene while the prisoner was arguing with the previous witness; he watched them for some moments and then saw the prisoner attempt to push past the other officer, following which Mr. Burns was taken into custody. The second policeman had thereupon taken over his colleague's post at the entrance to the street.

The cross-examination of this witness was based on two main propositions, the first being that he was too busily engaged with the large crowd to notice what was happening to his colleague; the second being that as he didn't go with the previous officer to the police station he wasn't there at all. This constable was, however, as steady a stone-waller as the first witness and he was not tempted to hit out at any of the wides that counsel bowled.

The defendant's evidence

Now it was the turn of the defence. "Come into the witness box, Mr. Burns," said Mr. Parncible, and, followed by Mure, the assistant gaoler, the prisoner marched briskly round the dock and up into the box just vacated by the second policeman. Mure picked up the New Testament from the ledge and held it out for the defendant to take.

"I don't swear," was the response.

Frell pounced on this immediately. "For what reason, sir?" he inquired severely. "Is it against your religious belief to take an oath?"

"I'm an atheist," barked the defendant defiantly.

"Very well," said the clerk, his legal conscience satisfied, "You may affirm." Thereupon James Burns solemnly and sincerely declared that the evidence he gave to the court would be the truth, the whole truth and nothing but the truth. After Mr. Parncible had elicited his name, address and occupation, plus the fact that he had never before in his life been charged with any offence whatsoever, his examination proceeded with "Has your wife been seriously ill for some time?", "Were you anxious to get home quickly to her last night?", "Did you tell the officer that when you went up to him?" and "Did he push you back and use the expression I put to him in cross-examination?"

"I'm glad to see that your witness agrees with all you say so far, Mr. Parncible," interrupted the magistrate acidly at this last question, "But I should be more impressed with his evidence if it wasn't merely a matter of answering 'Yes' to leading questions."

"I beg your pardon, sir," apologised counsel, "I was only trying to save time."

"Time's the last thing that's considered in this court when it's a matter of getting the truth and doing justice."

"As you please, sir," said Mr. Parncible with dignity, and, turning to James Burns, he commanded "Now tell his worship your story in your own words."

As the defendant had already been taken nearly to the end of it, he appeared a little puzzled where to begin, but he gallantly made the best of it by relating with considerable detail and indignation exactly how the constable took hold of him when he was arrested, and in what fashion he was conducted to the police station.

"Tell me," inquired Mr. Sutterthwick, after counsel had sat down to indicate he had finished his examination, "Didn't you have a little argument with the officer before you were arrested? Didn't you tell him that you thought you had the right to go through?"

"Yes, I did say that," agreed the prisoner, "But he did not tell me another way round and he didn't give me a chance to go away before he seized hold of me and frog-marched me to the station."

"If you thought you had the right to go through," pursued the magistrate, "It would not be unnatural for you to try to pass the officer and go along the route you'd intended to take. Isn't that what you did, in fact?"

"I may have tried to *walk* past him," admitted Mr. Burns, "But I didn't push him."

"I see," said the magistrate. "Will you go back now?" and the prisoner was escorted back to the dock.

"We've no witnesses, sir," said Mr. Parncible, "And I've only a few words to say about the case. You have heard the evidence on both sides, sir, and I need not recall it to you." He thereupon proceeded to do so with some inaccuracies which the clerk corrected by reference to his notes. Counsel then respectfully submitted that the charge had not been made out, that the testimony of the police was unreliable, that the story of his client, a man of unblemished character, ought to be accepted, and that, at least, it raised a reasonable doubt of which, he need hardly remind the magistrate, the prisoner must have the benefit. While he respectfully submitted all this several times over in slightly different words, Mr. Sutterthwick stared impassively at nothing and Frell hurriedly consulted the pages of Stone's *Justices' Manual*. Eventually the clerk scribbled a note and passed it up to the magistrate, just before Mr. Parncible finally sat down, his last words being "I say again, though I don't wish to repeat myself, that in view of all the circumstances of this case we confidently claim our discharge at your hands—with respect, sir."

The magistrate gives judgment

At a sign from Mure the prisoner rose from the dock seat. The magistrate cleared his throat and reflected a moment.

"This is very much a storm in a teacup," he began, "In many ways it's a trivial case, but like many apparently trivial cases it has its important side. I accept the constable's version of the incident. I find it impossible to believe that he acted as the defendant suggests. But that isn't the end of the matter. In pushing past the constable Mr. Burns was trying to exercise a right to go along the street; the constable prevented him because he thought he had a right to stop him going that way. One of the principal functions of courts of law in this country is to protect and enforce rights. And one great right of every British citizen is freedom from interference with his liberty unless that interference is sanctioned by the law. No police or any other executive power can lay a hand on him or prevent him doing what he wishes without the authority of the law. Usually it falls to the higher courts to check any abuse of power by the servants of the Crown, but even magistrates' courts may, on occasion, play their part in upholding this great constitutional principle. Now, as between the constable in this case and his superior officer it may well have been his duty to stop people going down this particular street. But he cannot rely on a senior officer's orders to justify actions which he has no legal right to take. And I know of no common law or statutory right given to the police to prevent a person going along a highway merely because there is an obstruction in it. In the case of a fire there is an Act of Parliament which permits a road to be closed to the public so that the fire brigade may work without hindrance. But in the ordinary way the streets can be used without restriction for passing and repassing, in the legal phrase. The clerk informs me that he has not been able to find any legal basis for what the police did in this case and that helps to assure me that I have not overlooked any provision of the law. Therefore it seems to me that Mr. Burns had a legal right to go along this street—even if he found he had to turn back eventually—and the police had no legal right to stop him. So the constable, when obstructed, was not acting in the execution of a constabulary duty, and, accordingly, Mr. Burns committed no offence and must now be discharged. I do not mean, however, by this decision to commend the defendant's good sense. I think he acted very stupidly and would have been well advised, in the interests of everybody, to do what the constable said. People should think of their social duties as well as their social rights. It is obviously a general convenience if a street in this condition is kept clear of people who can serve no useful purpose in it and may merely hinder those who are clearing away the obstruction. But I have to administer the law as I find it and not as I think it should be. It may be that the circumstances in this case are too unusual for Parliament to have provided specially for them. If I am wrong in my interpretation of the law I hope the police will ask me to state a case and then the High Court can give its ruling in the matter."

Mr. Sutterthwick smiled towards Inspector Campting who had started to scribble notes busily during the latter part of the magistrate's judgment. The Inspector's superiors might be disappointed when they received his report, but that would not worry Mr. Sutterthwick. He was not one of those magistrates who believe it to be their duty to " back up the police "; the task he set himself was to back up the law. If the police were enforcing the law they got his full support; if they overstepped or missed the mark Mr. Sutterthwick let them know it. The value of this might not be appreciated by individual officers, but it helped the body as a whole to keep the confidence of the public. A magistrate who worked on the motto " my policeman, right or wrong " was likely only to produce distrust and suspicion of the Force.

Mr. Parncible rose. " I'm making an application for costs against the police, sir," he announced.

" No, I don't think it's a case for costs," said the magistrate.

" As you please, sir," said counsel for the last time that day. The prisoner left the court as satisfied with the advocate as Mr. Parncible was. They had won their case.

Practice and Procedure

Court of Criminal Appeal

Transcripts of evidence

In *R.* v. *Passer & Jones* (March 22, 1954), the Court of Criminal Appeal (Lord Goddard C.J., Hilbery and Gerrard JJ.) refused an application for leave to appeal in which a full transcript of the evidence had been provided. Lord Goddard C.J. said that unless the court ordered a transcript the applicants must pay for it. In the present case the country had been put to the expense of something like £150. Transcripts of evidence were not to be given unless there was doubt about the evidence or the court ordered it. The applicants were ordered to pay for the transcript.

Quarter Sessions

Appeal Committee's power to deal with breach of probation on committal with a view to Borstal sentence

When dealing with a person committed by a petty sessional court for sentence under section 20 of the Criminal Justice Act, 1948, the powers of the sentencing court are much narrower than under section 29. Whether the case is dealt with by the appeal committee in a county or by the court of quarter sessions in London or a borough, the court may sentence the offender to Borstal training or deal with him " in any manner in which the court of summary jurisdiction might have dealt with him " (Criminal Justice Act, 1948, s. 20 (5) (*a*)).

A summary court dealing with an offence committed while the offender was subject to a probation order (or conditional discharge) made by quarter sessions cannot sentence for the original offence and so it would seem on the face of it that if instead of sentencing the summary court commits him to quarter sessions under section 20 the latter court cannot do so either. This is not necessarily conclusive. It can be argued with force that the defaulter is then in fact before the court which made the order and which is alone entitled to sentence him for the original offence. This argument is very strong so far as London Sessions or a recorder are concerned because they can deal with section 20 cases at their normal sessions and there is no doubt that a court can deal with a breach of one of its own orders after proof of conviction for an offence committed during its currency.

The argument cannot be put the same way where an appeal committee is concerned. It is a distinct body from the court which appoints it and its powers are those which are given it by statute. Yet a case can be made for an appeal committee to exercise the same powers as a recorder. In the first place the committal for sentence is " to quarter sessions " in both cases (Magistrates' Courts Act, 1952, s. 28 (1)). The difference in the constitution of the court comes when we turn to section 20 (4) of the 1948 Act which, as amended by the Magistrates' Courts Act, provides that an offender committed under the above section " shall be committed where the court of summary jurisdiction acts for a county . . . to the appeal committee of the quarter sessions for that county." This is ambiguous. It may mean that a committal to quarter sessions under section 28 of the 1952 Act is to be construed as a committal to the appeal committee or it may mean that the committal is to quarter sessions, but that the case is to be heard by a bench constituted in a particular way. The latter interpretation is consistent with the apparent intention of the 1948 Act that the powers of the sentencing court should be the same whether it sits for a county or a quarter sessions borough.

There is another provision which may help. Section 20 (6) of the 1948 Act provides that " references to a court of quarter sessions . . . in any . . . enactment relating to persons dealt with by quarter sessions . . . shall be construed as including references to an appeal committee of quarter sessions " which is dealing with a section 20 case. This seems to strengthen the argument for placing the appeal committee on the same footing as the full court elsewhere.

The matter cannot be said to be free from doubt. The writer inclines to the view that the appeal committee can deal with a breach of a probation order made by its own court of quarter sessions but unless and until the point has been tested in the High Court the safer course is to bring the defaulter before the full court for sentence for the original offence after he has been dealt with by the appeal committee for that committed subsequently.

The uncertainty about the powers of an appeal committee is an added reason for committing offenders under section 29 instead of under section 20 whenever possible. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Magistrates' Courts

Composition of juvenile courts

Home Office Circular No. 74/54 dated March 25, 1954

I am directed by the Secretary of State to invite the attention of the justices to the statement which he made in answer to a question in the House of Commons on December 16, 1953 (see [1954] Crim.L.R. 74), about the composition of juvenile courts.

As the justices will be aware, the Juvenile Courts (Constitution) Rules, 1933, provide that a juvenile court outside the Metropolitan Magistrates' Court area should include one man and, so far as practicable, one woman. The Lord Chancellor is now satisfied that sufficient women justices have been appointed to the Commission of the Peace to make feasible an amendment of the Rules to the effect that, as from the beginning of 1955, every juvenile court should be constituted of at least one man and at least one woman, except that in case of illness or other emergency, if the court cannot be fully constituted without adjournment, it may be made up of two men or two women. The existing proviso to Rule 13 will be preserved, enabling a stipendiary magistrate to sit alone if he thinks it inexpedient in the interests of justice to adjourn the proceedings.

Justices will, no doubt, wish to consider in good time whether any difficulties are likely to arise in complying with the new requirement referred to above. Under Rule 3 of the Juvenile Courts (Constitution) Rules, 1934, it is open to the justices at any time to appoint from among their number to serve on the juvenile court panel any justice who is specially qualified for the purpose. The Secretary of State understands that the Lord Chancellor will be prepared to make additional appointments either of men or women to the Commission of the Peace where this is considered necessary to enable the juvenile court panel to be strengthened so that a reasonable rota of attendances can be drawn up. In order that such appointments may be made before 1955, it is suggested that the justices should consider now whether more justices will be needed, and, if so, send their representations as soon as possible, in the case of county commissions to the

Lord Lieutenant of the County with a copy to the Lord Chancellor (or the Chancellor of the Duchy of Lancaster as the case may be); and in the case of borough commissions, direct to the Lord Chancellor or the Chancellor of the Duchy of Lancaster.

One justice signing process

The second part of section 29 of the Summary Jurisdiction Act, 1848, reads " and after the case shall have been so heard and determined one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined. . . ." If one looks for a section with corresponding wording in the Magistrates' Courts Act, 1952, one will not find it.

Rule 72 of the Magistrates' Courts Rules, 1952, lays down that " Every warrant under the Act shall be signed by the justice issuing it." But the Rules do not help answer the questions " Who is the justice issuing it ? " and " What is his authority to do so ? " Section 64 (1) of the Act provides that " where default is made in paying a sum adjudged to be paid by a conviction or order of a magistrates' court, the court may issue a warrant of distress . . . or issue a warrant committing the defaulter to prison." This seems to import a new procedure, namely, that it is the court which must now act in this matter, and not, as under the Summary Jurisdiction Acts, a justice. Further examination of the statute, however, shows that what appears new may be no more than the old in a new form.

Section 124 (1) of the Act of 1952 defines " magistrates' court " as meaning " any justice or justices of the peace acting under any enactment or by virtue of his or their commission or under the common law." As the Act in most cases confers jurisdiction on a " magistrates' court " and not on a justice or justices, this definition, if logically construed, would completely fail to achieve its purpose. It is unlikely that any court would pursue logic to this extreme and for practical purposes it must be taken that where the Act confers powers on a " magistrates' court " it means to give authority to a justice or justices.

The next step is to determine whether one justice may act as a magistrates' court for the purpose of issuing process to enforce payment of sums due under an adjudication of the court. Turning to section 98, which deals with the constitution of magistrates' courts, one finds that it makes requirements as to the number of justices who may deal with certain specified matters, but it lays down no general rule on this subject. One is left to assume that there is no limit, either maximum or minimum, on the number of justices needed to constitute a magistrates' court when it is exercising jurisdiction in matters not within the specific provisions of the section. The issue of process to enforce unpaid sums of money is not mentioned in section 98 and consequently one may take it that one justice may act as a magistrates' court for this purpose.

One final matter remains to be settled before it can be said that the provisions of the new Act correspond in effect with those of the Summary Jurisdiction Act which governed this kind of proceeding. Section 29 of the 1848 Act gave jurisdiction to any justice whether or not he had been a member of the court responsible for the adjudication in respect of which he was issuing a warrant. Section 64 (1) of the new Act, in dealing with default in paying a sum adjudged by a magistrates' court, empowers " *the* court " to issue warrants. This would seem to restrict jurisdiction considerably and section 124 (2) has to be brought into play to restore the position to what it was before the Act came into force. Section 124 (2) provides that " Except where the contrary is expressed, anything authorised or required by this Act to be done by, to or before the magistrates' court by, to or before which any other thing was done, or is to be done, may be done by, to or before any magistrates' court acting for the same petty sessions area as that court." So, at last, after referring to half a dozen provisions of the new Act, one can construct a power which was clearly expressed in a few lines in that old Summary Jurisdiction Act of 1848, which was so often criticised for lack of clarity in its drafting.

It is unfortunate that such a labyrinthine journey through the Magistrates' Courts Act should be necessary to show the authority for an act so often undertaken by any justice in the normal working of his court. If proceedings were ever taken challenging a magistrate's jurisdiction to issue some particular warrant in respect of an unpaid fine, the task of counsel in the High Court might not be easy. [A. E. Jones.]

Case and Comment

[Reports of cases included here are prepared by C. J. Ellis, *Barrister-at-Law,* unless otherwise appears]

Agent—*Commission—illegal payment*

Director of Public Prosecutions *v.* McInness [1] (West London Magistrates' Court: Mr. E. R. Guest, Metropolitan Magistrate: February 5, 1954).

The accused was charged with demanding and accepting money from various people in consideration of supplying or undertaking to supply to them addresses or other particulars of houses to let, contrary to section 1 (1) (*b*) of the Accommodation Agencies Act, 1953. The accused ran an accommodation bureau and supplied people with lists of addresses of flats to let on condition that they paid one guinea and promised that if they were satisfied with any flat of which he had informed them, they would then pay him a fee of one week's rent less this guinea. The accused claimed that in asking for the guinea he was asking for a deposit which would be deducted from the fee of one week's rent if clients were suited or returned if they were not suited and submitted that this deposit was not a payment within the meaning of the Act.

The magistrate *held* that the payment of money was made a condition precedent to the supplying of addresses whether it was paid as a deposit or not. The defendant was found guilty and fined. [Reported by Mr. F. A. Green, Chief Clerk to the West London Magistrates' Court.]

Commentary. As to meaning of "deposit" see Stroud's *Judicial Dictionary,* 3rd ed., Vol. 1, p. 785.

Coroner—*New inquest—fresh evidence*

Re An Application by the Coroner for the West Derby Division of Lancashire [2] (Q.B., Divisional Court: Lord Goddard C.J. and Slade J. : March 5, 1954).

On February 15, 1954, a general labourer aged about sixty years, was shovelling coal from a truck at a factory where he was employed when he fell some seven feet from the truck to the ground. He was taken to the ambulance room attached to the factory and there died. Medical evidence given at the inquest was to the effect that he had died from influenza and that the fall had nothing to do with his death. The coroner recorded that death was due to acute influenza. The widow instructed the Home Office pathologist for the area who reported that he thought that the fall had a great deal to do with the death. The coroner, with leave of the Attorney-General, applied to the court *ex parte* for leave to apply for an order to quash the inquisition and for a further inquest to be held on the grounds of the discovery of fresh evidence, as, in view of the findings of the pathologist, there might well have been a miscarriage of justice.

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[1] For the prosecution: *R. E. Seaton* (instructed by the Director of Public Prosecutions). The accused appeared in person.

[2] For the applicant: *Barry Sheen* (instructed by Blundell, Baker & Co. for Brighouses, Southport).

The court granted the application and, as there was no one whom it was necessary to serve with notice, made the order absolute in the first instance.

COMMENTARY. See also *R.* v. *Stanton, ex p. Macarthur* [1954] Crim. L.R 206; Archbold, 33rd ed., 120.

Courts-martial—*Appeals—expedition of appeals where short sentences imposed.*

R. *v.* LEIGHTON [3] (Courts-Martial Appeal Court: Lord Goddard C.J., Hilbery and Gerrard JJ.: March 22, 1954) (*The Times*, March 23, 1954).

L. was convicted on two charges, one of indecent assault and one of assault occasioning actual bodily harm. He was sentenced to nine months' imprisonment and discharge with ignominy. B., the alleged victim of both assaults, was an unsatisfactory witness and had been reprimanded at the court-martial. There was no corroborating evidence of the indecent assault. In respect of the other assault, the prosecution witnesses said that L. had opened the door of his room and attacked B., whereas L. said that a number of men, including B., broke into his room and attacked him. The door of the room had been broken inwards. L. appealed against his conviction, having already served his sentence.

Held, allowing the appeal, that (1) the finding of the court-martial on the charge of assault occasioning actual bodily harm could not be supported having regard to the evidence and in view of the fact that B. had been a most unsatisfactory witness the conviction for indecent assault could not be allowed to stand without corroboration.

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[3] For the appellant: *Victor Durand* (instructed by the Registrar, Courts-Martial Appeal Court). For the Crown: *D. E. Evans* (instructed by the Directorate of Army Legal Services).

(2) Appeals should be speeded up because otherwise, where short sentences were involved, the appellant would have served his sentence before the appeal was heard. It was not pleasant for the court to think when they quashed L.'s conviction that he had already served his sentence.

Court of Criminal Appeal—*Appeal to—powers of the court on committal to quarter sessions for sentence*

R. *v.* WARREN [4] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Slade JJ.: February 22, 1954) ([1954] 1 W.L.R. 531; [1954] 1 All E.R. 597).

W. a house master at a L.C.C. reception home, was convicted by a magistrate on four charges of indecent assault on small boys. The magistrate, who only had power to sentence W. to twelve months' imprisonment, thought that the case was too serious for him to deal with and committed W. to quarter sessions for sentence. W. was sentenced to five years' imprisonment. W. appealed against sentence to the Court of Criminal Appeal under section 29 (3) of the Criminal Justice Act, 1948, which provides that where a person had been sent forward for sentence "(*d*) if . . . quarter sessions passes a sentence which the court of summary jurisdiction would not have had power to pass, the offender may appeal against the sentence to the Court of Criminal Appeal as if he had been convicted on indictment." W.'s counsel wished to submit *inter alia* that there was no information before the magistrate regarding W.'s character and antecedents which justified him in sending W. forward to quarter sessions for sentence.

Held, that (1) the Court of Criminal Appeal had no power to inquire whether W. was wrongly committed to quarter sessions for sentence and if a person wished to take that point, the right course was for him to apply to the Divisional Court of the Queen's Bench Division for an order of prohibition or certiorari before he appeared before quarter sessions.

(2) On the present appeal, the court only had power to consider the sentence as such under section 4 of the Criminal

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[4] For the appellant: *M. Waters* (instructed by Sylvester, Amiel & Co.). For the Crown: *J. H. Buzzard* (instructed by the Director of Public Prosecutions).

Appeal Act, 1907, and taking into consideration W.'s previous good character and the fact that he might not have been subject to those tendencies for very long, the court would reduce the sentence to three years' imprisonment.

Evidence—*Admissibility—competence of wife where offence committed against her property*

R. *v.* MOORE[5] (Leeds Assizes: Pearson J.: March 15, 1954).

The accused was charged with arson contrary to the Malicious Damage Act, 1861. It was alleged that, a week after he had left his wife, he had maliciously set fire to the dwelling-house occupied by her and by their children. At the trial the prosecution sought to call the wife as a witness for the prosecution, maintaining that under section 12 of the Married Women's Property Act, 1882, she was entitled to bring criminal proceedings for the protection of her own property and that under section 15 of the Children and Young Persons Act, 1933, the wife was a competent witness as the offence involved bodily injury to the children. The defence objected on the following grounds:—(1) that a wife's right to bring criminal proceedings to protect her property was limited to cases of larceny by the wording of the proviso to section 12 of the Act of 1882 and of section 36 of the Larceny Act, 1916, which re-enacts it, and which both refer to property "taken" by the husband; (2) that the husband's departure from the matrimonial home for only a week did not amount to his leaving or deserting his wife, so as to confer any rights upon her under section 12; (3) no question of bodily injury to the children was involved; (4) the wife's proposed evidence was prejudicial and irrelevant.

PEARSON J. *held* that none of the exceptions to the general rule that a wife is not competent to give evidence against her husband applied in this case, except those contained in section 12 of the Act of 1882.

He did not accept the contention of the defence that in criminal proceedings a wife's rights under section 12 are limited to cases of larceny and pointed out that section 36 of the Larceny Act is only so limited by the nature of the Act itself. Whether or not the husband and wife were still living together was a fact to be decided on the depositions. He found that they had separated and that consortium had ceased. Therefore the wife's evidence was admissible under section 12. It was not, however, admissible under the Children and Young Persons Act, 1933, since the charge did not necessarily involve any bodily injury to the children. The wife's evidence was relevant and not merely prejudicial. [Reported by S. Levine, Esq., *Barrister-at-Law.*]

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[5] For the prosecution: *J. Stanley Snowden* (instructed by the Town Clerk, Bradford) For the defence: *B. A. Payton* (instructed by Herbert Duxbury, Bradford).

COMMENTARY. See Archbold, 33rd ed., 46, 496.

Evidence—*Admissibility—statutory instrument—validity*

R. *v.* SHEER METALCRAFT [6] (Surrey Assizes: Streatfeild J.: November 20, 1953) ([1954] 2 W.L.R. 777; [1954] 1 All E.R. 542).

The defendants were charged with buying steel sheets at prices in excess of the scheduled maximum prices, in contravention of the Iron and Steel Prices Order, 1951. It was submitted on behalf of the defendants that the Order was invalid because the deposited schedules which formed part of the Order had not been printed as required by section 2 (1) of the Statutory Instruments Act, 1946, and the Minister of Supply, when sending the order to the Queen's Printer, had failed to certify in accordance with regulation 7 of the Statutory Instruments Regulations, 1947, that it was not necessary to print the schedules.

Held, that (1) once a statutory instrument had been made and laid before Parliament it was valid; the requirements about printing and publishing were merely procedural and did not affect the validity of the statutory instrument. Accordingly the Order of 1951, having been laid before Parliament, was valid and admissible in evidence although the deposited schedules had not been printed and there was no certificate by the Minister that the printing was unnecessary.

(2) Under section 3 (2) of the Act of 1946, which provided that it was a defence for any person charged with contravening a statutory instrument to prove that it had not been issued by the Stationery Office unless it was shown that " reasonable steps had been taken for . . . bringing the purport of the instrument to the notice of the public, or of persons likely to

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[6] For the prosecution: *Melford Stevenson Q.C.*, *E. Clarke* (instructed by the Treasury Solicitor). For the defendants: *George Pollock Q.C.*, *R. D. L. Du Cann* (instructed by Peters & Peters).

be affected by it," the onus of proving that reasonable steps had been taken was on the Crown.

The defendants were convicted on all the counts in the indictment.

COMMENTARY. This case decides a question left open by Parker J. in *Simmonds* v. *Newell* [1953] 1 W.L.R. 826, *viz.*, whether the failure to print a statutory instrument which was required to be printed rendered the instrument wholly invalid.

Firearms and Offensive Weapons—*Unlawful possession—weapon carried with lawful excuse*

R. *v.* JURA [7] (Court of Criminal Appeal: Lord Goddard C.J., Slade and Gerrard JJ.: March 8, 1954) ([1954] 2 W.L.R. 516; [1954] 1 All E.R. 696).

J. was tried on an indictment containing four counts: (1) shooting with intent; (2) common assault; (3) possessing firearms with intent; and (4) carrying an offensive weapon without lawful authority or reasonable excuse in a public place contrary to section 1 (1) of the Prevention of Crime Act, 1953. J. had gone to a shooting gallery with a woman, when, after firing some shots at the target with an air rifle, in a moment of anger, he turned round and fired on the woman as she was walking away, hitting her in the hip. The jury failed to agree on the first count and were discharged from giving a verdict. They convicted J. on the second and fourth count and acquitted him on the third. He was sentenced to six months' imprisonment on the second count and eighteen months' on the fourth count to run concurrently. The trial judge in summing-up on the fourth count said that the language of the Act of 1953 was quite wide enough to cover the case. If the shooting was an accident then J. was not in unlawful possession of the air-rifle, but if he turned the rifle deliberately on the woman, then he was in unlawful possession. J. appealed against his conviction on the fourth count.

Held, allowing the appeal, that the judge's direction could not be upheld; it was not the possesion but the use of the rifle which was unlawful and as J. was carrying the rifle for the purpose of shooting at a target at the shooting gallery he was not carrying it without lawful excuse. Accordingly, the judge should have directed the jury to acquit on the fourth count.

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[7] For the appellant: *Geoffrey Baker* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *J. S. Snowden* (instructed by the Town Clerk, Bradford).

The appellant might have been convicted of a felony under the Offences against the Person Act, 1861.

COMMENTARY. In a case similar to this, *R.* v. *Hodgson* (Leeds Assizes, March 3, 1954), a man who discharged a shotgun from his car when following another car was charged under the Prevention of Crime Act, 1953, with having with him in a public place an offensive weapon without lawful authority or reasonable excuse. Pearson J. directed the jury that a shotgun is not an article made for causing injury to the person and therefore the prosecution must establish an intention on the part of the accused, at the time of firing the shotgun, to use it for causing injury to the person. The question whether the accused had such an intention is for the jury to decide.

In *H. M. Advocate* v. *Green* (Aberdeen Sheriff's Court) a man who used a skean-dhu in a threatening manner in the street was similarly charged. He pleaded guilty and was fined £2 on this charge. See also 1954 S.L.T. 67.

See Archbold, 33rd ed., p. 882.

Forgery—*Football coupons—coupons signed by one person and filled in by another*

R. *v.* BUTLER [8] (Court of Criminal Appeal: Lord Goddard C.J., Slade and Gerrard JJ.: March 8, 1954) (*The Times*, March 9, 1954).

B. was charged with offences relating to football pool coupons. The first six counts of the indictment charged him with uttering forged coupons and attempting to win money by fraud by signing the coupons with fictitious names. The last six counts charged him with forgery in respect of coupons which he persuaded persons to sign and then give to him to fill in. It was proved that B. was a defaulter with the pools so that they would not have accepted football coupons sent in by him in his own name. B. was convicted on all counts and sentenced to twenty-one months' imprisonment. On appeal:—

Held, allowing the appeal in part, that (1) as the Forgery Act, 1913, provides that a document is false "if the whole or some material part of it purports to be made by or on behalf of a fictitious . . . person" and as there was ample evidence for the jury to consider that the coupons were made in the names of fictitious persons, the convictions on the first six counts would be affirmed.

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[8] For the appellant: *James Robbins* (instructed by the Registrar, Court of Criminal Appeal). For the prosecution: *J. Glyn Burrell* (instructed by North, Kirk & Co., Liverpool).

(2) In respect of the other six counts, the fact that the coupons had been filled in for amounts that the persons signing them would not be able to pay did not amount to forgery and the convictions on those counts would be quashed. The sentence was accordingly reduced to twelve months' imprisonment.

COMMENTARY. This case is near the border line of what constitutes falsity in a writing. In order that a document shall be a forgery it "must tell a lie about itself" (Kenny, *Outlines of Criminal Law* (1952), § 387). The mere use of a fictitious name does not make a document a forgery (*R.* v. *Martin* (1879) 5 Q.B.D. 34; *R.* v. *Aickles* (1787) 1 Leach 438). In assessing the falsity of a writing it is necessary to know such external matters as establish the purpose for which the writing is ostensibly made. See hereon Russell on *Crime,* 10th ed., vol. 2, pp. 1457–63.

See Archbold, 33rd ed., 799 *et seq.*

Hire-Purchase — *Rental agreement with limited option to purchase—whether a hire-purchase agreement*

R. *v.* R. W. PROFFITT [9] (Manchester Assizes: Jones J.: March 19, 1954).

The defendant company was charged with disposing of a television set, radio receiver and washing machine in pursuance of three separate but similar hire-purchase agreements each of which was in contravention of article 1 of the Hire Purchase and Credit Sale Agreements (Control) Order, 1952 (S.I. No. 121). For the purposes of the order the definition of a hire-purchase agreement is the same as that contained in section 21 of the Hire-Purchase Act, 1938, namely, "an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee." Each of the agreements in question was an agreement for the rental of the goods and provided, *inter alia*: "If this agreement shall continue in force for the period of two years from the date hereof then the company shall afford the customer the three alternatives following:—(a) Subject to the enactment of the necessary legislation, to purchase the [television set, radio receiver and washing machine] for the sum of one shilling. (b) To renew this rental agreement for a third and fourth year under the same terms . . . but at a reduced rental. (c) To renew this rental agreement for a third and fourth year under the same terms . . . but excluding the provisions [for maintenance service without additional charge] of clause 2 of this agreement. In consideration of the withdrawal of the provision for maintenance the company agrees that the rental charge for the third and fourth years shall be at the rate of one shilling per year." The prosecution contended that by virtue of the power to purchase the articles for one shilling at the end of two years under clause (a) above this agreement fell within the definition of the Act of 1938.

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[9] For the prosecution: *C. T. B. Leigh* (instructed by the Solicitor to the Board of Trade). For the defendant company: *Neville Laski Q.C.*, *C. N. Glidewell* (instructed by David Blank, Alexander & Co., Manchester).

In his direction to the jury, Jones J. said that the essence of a hire-purchase agreement is that the hirer shall have an option to buy the goods. Since in the defendants' agreement the option to purchase was "subject to the enactment of the necessary legislation," it was only a conditional option. The question whether property "will or may pass" under an agreement must be judged at the time when it is entered into and in this case at that time the hirer received no option to buy, and there was no question of property passing. The option to buy the goods must be exercisable by the hirer under some right conferred upon him by the agreement and not one which is merely exercisable if the legislature so allows. The defendants were found not guilty. [Reported by C. N. Glidewell, Esq., *Barrister-at-Law*.]

COMMENTARY. Article one of the Hire-Purchase and Credit Sale Agreements (Control) Order, 1952, provides that no person shall dispose of any goods to which the Order applies in pursuance of a hire-purchase or credit sale agreement unless certain requirements, which are contained in Schedule 2 of the Order, are fulfilled.

As to the meaning of "hire-purchase agreement" see Stroud's *Judicial Dictionary*, 3rd ed., Vol. 2, 1321.

Indecent Assault — *Maximum penalty — attempted carnal knowledge of girl under the age of thirteen*

R. *v.* KING[10] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Gerrard JJ.: March 22, 1954) (*The Times*, March 23, 1954).

The appellant was convicted of an indecent assault on a girl aged two. He had five previous convictions for the same class of offence and the recorder sentenced him to five years' imprisonment thinking that the sentence was justified under the Attempted Rape Act, 1948. He subsequently realised that the maximum sentence that he could impose was two years' imprisonment. He reported the matter to the Home Secretary who referred the case to the Court of Criminal Appeal under section 19 (*a*) of the Criminal Appeal Act, 1907.

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[10] The appellant did not appear and was not represented.

Held, reducing the sentence to two years' imprisonment, that the increase of the maximum sentence for attempted rape from two to seven years' imprisonment by the Act of 1948, did not extend to cover the case of attempted carnal knowledge of a girl under the age of thirteen for which the maximum sentence was still two years' imprisonment. The court hoped that there would be an alteration in the law.

COMMENTARY. Attempted Rape Act, 1948, s. 1: "Where a person is convicted . . . of an attempt to commit rape, the court shall have power to pass a sentence of [imprisonment] for a term of not more than seven years, in lieu of dealing with him in any other manner in which the court has power to deal with him."

In answer to a question in Parliament on April 1, 1954 (H.C. Debates, Vol. 525, col. *227*), the Home Secretary stated that he had noted the observation of the court in this case, but he did not know when it would be possible to introduce legislation on this matter.

See Archbold, 33rd ed., 1095.

Larceny—*Alibi—miscarriage of justice*

R. *v.* ASHMAN [11] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Gerrard JJ.: March 22, 1954) (*The Times*, March 23, 1954).

A. was charged on an indictment containing two counts; the first count charged him with burglary of a shop, the second with larceny from a dwelling-house at South Mimms. A police officer had seen A. coming from the direction of the shop that had been broken into and there was no doubt that A. was in the neighbourhood. In respect of the second count, a young lady living in the house had seen a man coming from the back door at about 5.30 p.m. on the day in question and identified him as A. A.'s defence to that count was an alibi supported by his foreman, who said that on that day he had driven A. from Southend to London, putting him down at Mile End Station at 6 p.m. so that A. could not possibly have broken into the house at South Mimms. A. was convicted on both counts and sentenced to nine months' imprisonment. It subsequently appeared that P., who had been arrested in Ireland for an offence committed there, had confessed to the burglary of the shop for which A. had been convicted. There was a physical resemblance between A. and P. On appeal:—

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[11] For the appellant: *C. J. Polson* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Alastair Morton* (instructed by the Director of Public Prosecutions).

Held, allowing the appeal, that (1) in respect of the burglary count, it was clear that P. had commited the offence in view of the specific details that he gave and there had been a miscarriage of justice.

(2) Although questions of alibi were for the jury, as they had accepted the evidence on the first count that A. was engaged in an unlawful expedition, they must have been prejudiced and must have disbelieved the alibi which they might otherwise have accepted: that conviction would also be quashed.

Larceny—*Cheques—asportation—embezzlement by servant*

R. *v.* DAVENPORT[12] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Slade JJ.: February 22, 1954) ([1954] 1 W.L.R. 569; [1954] 1 All E.R. 602).

D., the secretary of a company, was charged on an indictment containing fourteen counts, with larceny as a servant of moneys. D. received blank cheques signed by two of the company's directors, which he had to fill in with the names of the payees, and pay to those persons. In four cases, the subjects of the first four counts, D. gave four cheques amounting to £2,250, to L., to whom he owed money for a yacht that he was buying. He filled in the name of L.'s bank as payee and L. paid the cheques into his own account. D. paid seven other cheques to other persons in a similar manner. In three other cases, D. gave the cheques to S., filling in S.'s bank as payee. S. cashed the cheques for D. by giving him part in cash and part in open cheques. D. was convicted on all the counts in the indictment and sentenced to eighteen months' imprisonment. D. appealed against conviction.

Held, that (1) with regard to the cheques paid to D.'s creditors, D. was not guilty of larceny because there had been no asportation or taking away. Money paid into a bank became the banker's money and when a banker paid out money it was his own money that was being paid and not that of his customer; but he debited the customer's account. Accordingly D., by causing the company's account to be debited was not stealing their money. Had he been charged with fraudulent conversion there could have been no answer to the charge.

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[12] For the appellant: *Eric Myers* (instructed by Beach & Beach). For the Crown: *Maxwell Turner* (instructed by the Director of Public Prosecutions).

(2) In respect of the cheques for which D. received cash, that amounted to embezzlement: *R.* v. *Gale* ((1876) 2 Q.B.D. 141). Since it was provided by section 44 (2) of the Larceny Act, 1916, that where a man was charged with larceny and the facts proved showed that he had been guilty of embezzlement he could be convicted of the latter crime, the Court of Criminal Appeal were empowered by section 5 (2) of the Criminal Appeal Act, 1907, to substitute a verdict of embezzlement for that of larceny, since all the facts constituting embezzlement had been proved on the charge of larceny.

COMMENTARY. In *R.* v. *Gale*, *supra*, the accused was the clerk of an insurance company, who in the ordinary course of business, received several cheques payable to his order. It was his duty to indorse these cheques and give them to the company's cashier. Instead of doing so, he indorsed them and obtained money for them from his friends, who paid the cheques into their own banks. The accused then appropriated the money to his own use. It was held that the prisoner was rightly convicted of embezzling the proceeds of the cheques, because although these were received from third persons and not from the bankers, they were received on account of the company.

See Archbold, 33rd ed., 645.

Obscene Publications—*Test of obscenity*

R. *v.* REITER [13] (Court of Criminal Appeal: Lord Goddard C.J., Slade and Gerrard JJ.: March 15, 1954) ([1954] 2 W.L.R. 638; [1954] 1 All E.R. 741).

R., C. and three companies were convicted on an indictment containing seven counts of uttering and publishing obscene libels contained in seven books. R. and C. were sentenced to six months' imprisonment and each company was fined £2,000. They appealed against conviction and sentence. One ground of appeal was that the recorder in telling the jury to apply the test of obscenity laid down in *R.* v. *Hicklin* ((1868) L.R. 3 Q.B. 360) should have told them to apply the test taking into consideration present-day standards.

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[13] Counsel for the first appellant and one company: *Christmas Humphreys* (instructed by Gerald Samuels & Co.). For the second appellant and two companies: *Gerald Howard Q.C.*, *Christmas Humphreys* (instructed by Lewis & Lewis and Gisborne & Co.). For the Crown: *J. M. Griffith-Jones* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeals, that (1) the law was the same today as it was in 1868 and the test was as Cockburn C.J. said (L.R. 3 Q.B. at p. 371) " whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

(2) In the course of the trial the jury were asked to look at books other than those which were the subject-matter of the charges; that was absolutely wrong. The law in that respect was the same in Scotland as in England and the principles were correctly stated in *Galletly* v. *Laird* (1953 S.C.(J.) 16), where it was said: " The book or picture itself provides the best evidence of its own indecency or obscenity or of the absence of such qualities. . . . The character of other books is a collateral issue, the exploration of which would be endless and futile. If the books produced by the prosecution are indecent or obscene, their quality in that respect cannot be made any better by examining other books, or listening to the opinions of other people with regard to these other books."

COMMENTARY. See Archbold, 33rd ed., 1398; Stroud's *Judicial Dictionary*, 3rd ed., Vol. 3, 1947.

Quarter Sessions—*Committal to for sentence—appeal against sentence.* See R. *v.* WARREN, p. 375.

Sentence — *Preventive detention — material age — age at the time of trial*

R. *v.* FALLOWS [14] (Court of Criminal Appeal: Lord Goddard C.J., Pilcher and Slade JJ.: March 1, 1954) ([1954] 1 W.L.R. 508; [1954] 1 All E.R. 623).

F., who had a number of previous convictions, was convicted of attempted warehouse breaking and sentenced to eight years' preventive detention. He committed the offence a few days before his thirtieth birthday, but the trial took place after he had attained 30 years of age. F. applied for leave to appeal against sentence on the ground that he was not of the qualifying age for preventive detention.

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[14] The applicant did not appear and was not represented.

Held, dismissing the application, that L.'s age at the time of trial was the governing factor and therefore he was liable for preventive detention.

COMMENTARY. Criminal Justice Act, 1948, s. 21 (2): "Where a person who is not less than thirty years of age (a) is convicted on indictment of an offence punishable with imprisonment for a term of two years or more . . . the court may pass . . . a sentence of preventive detention. . . ."

See Archbold, 33rd ed., 1525 *et seq.* As to the meaning of "age" see Stroud's *Judicial Dictionary*, 3rd ed., Vol. 1, p. 88.

Sentence—*Road traffic offences—disqualification*

R. *v.* MARSHALL[15] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Slade JJ.: February 22, 1954).

M. was sentenced to eighteen months' imprisonment for factory breaking, larceny and receiving, and three months' for taking and driving away a car. He appealed against the sentence of three months'. The court stated that they had said that courts ought not to take into account motoring offences involved in the commission of a crime when considering the sentence for that crime, but should give a separate penalty so that they could impose a disqualification. The court thought that in all motoring offences, unless there was some good reason, there ought to be a sentence of disqualification. Dismissing M.'s appeal, they disqualified him from driving for two years and three months.

Sentence—*Robbery—robbery of mail bags*

R. *v.* LOWE[16] (Court of Criminal Appeal: Lord Goddard C.J., Pilcher and Slade JJ.: February 22, 1954) (*The Times*, February 23, 1954).

L. was convicted on an indictment charging him with robbery of mailbags; the first count charged robbery with violence, the second, robbery with aggravation. L. was sentenced to five years' imprisonment on each count to run concurrently. In dismissing L.'s appeal against sentence, the court said that he might have been charged under section 12 of the Larceny Act, 1916, with stealing a mailbag for which he would have been liable to imprisonment for life, and of course he might have been so sentenced on the count of robbery with aggravation. The offence of robbing the mails was a very serious one of which there had been too many recently. The sentence imposed on L. was a lenient one and the court thought that leave to appeal might have been given with a view to increasing the sentence, but in view of L.'s remarkably fine war record and the fact that he had had no previous convictions they would not do so.

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[15] The appellant appeared in person. The Crown was not represented.

[16] The appellant appeared in person. The Crown was not represented.

Vagrancy—*Persons found on premises for unlawful purposes —whether premises an " area "*

R. *v.* Armstrong [17] (Scarborough Quarter Sessions: J. S. Snowden, Recorder: February 4, 1954).

A. was found in the early hours of the morning by a police constable lying injured in an " area " at the rear of a cinema. The area, which was quite narrow, was below street level and gave access to some steps to a door leading into a street and also to the boiler house of the cinema. It was used for bins and tipping ashes. He was charged with having been found in and upon certain enclosed premises, namely an area of the cinema house, for a certain unlawful purpose, namely to steal contrary to section 4 of the Vagrancy Act, 1824. He was sentenced to three months' imprisonment. On appeal it was contended that the place where the appellant was found could be described as an " area " but was not an area within the meaning of the section in that it was not an area adjoining or adjacent to a dwelling-house, warehouse, coach-house, stable or outhouse specified in the section. For the prosecution it was contended that the words " or in any enclosed yard, garden or area " which words must be construed *ejusdem generis*, applied to the area regardless of the fact whether such area formed part of or was adjoining or adjacent to any of the buildings specified in the section.

The recorder allowed the appeal applying in the absence of any other authority the *obiter dicta* of Viscount Caldecote C.J. in *Knott* v. *Blackburn* [1944] 1 K.B. 77; [1944] 1 All E.R. 116, in which case it was held that railway sidings cannot constitute an area within the section. [Reported by Messrs. Whitfield, Bell & Smith, Solicitors.]

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[17] For the prosecution: *E. Ould* (instructed by Whitfield, Bell & Smith, Scarborough). For the appellant: *C. D. Chapman* (instructed by Cook, Fowler & Outhet, Scarborough).

COMMENTARY. The point at issue in this case was expressly left open for further consideration in *Knott* v. *Blackburn*, *supra*, see *obiter dicta* of the three judges in that case and particularly the judgments of Macnaghten J. and Tucker J. The *dictum* of Lord Caldecote C.J. was to the effect that an area is an open space below the level of the ground which has been excavated for the purpose of building a house on the site. It seems from this that the section is largely nullified as the words "yard, garden or area" in that event only apply to the particular buildings specified in the section, and any enclosed yard, garden or area attached or adjoining such buildings as a church, school, lock-up shop, or office do not come within the ambit of the section.

As to other meanings of "area" see Stroud's *Judicial Dictionary*, 3rd ed., Vol. 1, 183–4.

Acts and Orders

Animals

VIRUS HEPATITIS ORDER, 1954 (S.I. No. 268): operative March 4, 1954.

Virus hepatitis is included among the diseases affecting poultry to which the Diseases of Animals Act, 1950, applies, and is made subject to the Animals (Miscellaneous Provisions) Order, 1927 (S.I. No. 290), as amended. Provision is made for the detention and isolation of poultry affected or suspected of being affected by this disease and for the cleaning and disinfection of premises and utensils used for them.

As to infringement of the Order, see sections 78–80 and 83 of the 1950 Act.

Civil Defence

CIVIL DEFENCE REGULATIONS, 1954; GAS UNDERTAKERS (S.I. No. 269): TRANSPORT (S.I. No. 274): both operative March 24, 1954; ELECTRICITY UNDERTAKINGS (S.I. No. 377): operative March 28, 1954.

Gas boards, area electricity boards and the British Electricity Authority may be required by a notice in writing served on them by the Minister of Fuel and Power to give him a report as to the measures they have taken or propose to take to secure the due functioning of their undertaking in the event of hostile attack or to take such measures as he may specify. Similar duties may be required by the Minister of Transport and Civil Aviation of undertakers carrying on a railway, canal, inland navigation, dock or harbour undertaking. Undertakers carrying on a dock or harbour undertaking may also be required to take measures to secure that their undertaking is capable of providing services in the event of hostile attack which would not normally be required of it.

For failure to make a report or take the measures required by a Minister within the time specified by the notice, an undertaker is liable on summary conviction to a fine not exceeding £100. For failure to make a report continuing after conviction an undertaker is liable to a fine not exceeding £10 for each day on which it so continues. For failure to take the measures required by the Minister continuing after conviction, a gas board, area electricity board or the British

Electricity Authority is liable to a fine not exceeding £10 for each day and any other undertaking to a fine not exceeding £50 for each day. The court may, however, fix a reasonable period from the date of the conviction for compliance with the notice and during this time the daily penalty is not recoverable.

Civil Defence Act, 1939, ss. 36 (2) (*b*), 37 are repealed as regards gas boards, the British Electricity Authority and area electricity boards; ss. 36, 37, 40, 41 (2) are repealed as regards the other public utility undertakers, except in so far as they relate to the provision of air raid shelters; ss. 76–79, 91 (20), (28) are made to apply to notices, reports or other actions under these regulations.

See also Civil Defence (Police) Regulations, 1954, below, p. 393.

Electricity

See Civil Defence (Electricity Undertakings) Regulations, 1954, above, p. 389, Rights of Entry (Gas and Electricity Boards) Act, 1954, below.

Gas

RIGHTS OF ENTRY (GAS AND ELECTRICITY BOARDS) ACT, 1954 (2 & 3 Eliz. 2, c. 21): operative April 18, 1954.

No rights of entry conferred by Acts relating to gas or electricity or by local Acts, exercisable for the purposes of a gas or electricity board may be exercised in respect of any premises except with consent given by or on behalf of the occupier of the premises or under the authority of a warrant granted by a justice of the peace (in Scotland, by the sheriff or magistrate or justice of the peace having jurisdiction in the place where the premises concerned are situated) (s. 1). If a person seeks to exercise a right of entry without a warrant, no person is liable to any penalty under any Act relating to obstruction of the exercise of a right of entry to which this Act applies for refusing him admission (s. 1 (3)). A warrant may be granted if it is shown to the satisfaction of the justice on sworn information in writing that admission to premises is reasonably required, that the gas or electricity board or their employee would, apart from the provisions of this Act, be entitled to exercise a right of entry in respect of the premises and that any requirements of the Act granting this right have been complied with (s. 2 (1)). A warrant may not be granted unless notice has been given to the occupier except in cases of emergency, or where the premises are unoccupied or where notice would defeat the object of entry (see s. 2 (2)). Where a warrant is granted, entry may be made by force if necessary (s. 2 (1)).

The Act alters the legal position as disclosed in *Grove* v. *Eastern Gas Board* [1952] 1 K.B. 77.

See also Civil Defence (Gas Undertakers) Regulations, 1954, above, p. 389.

London

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 4 (S.I. No. 234): operative March 24, 1954; No. 5 (S.I. No. 275): operative March 30, 1954.

Prescribed routes are detailed for Welbeck Street, St. Marylebone and Arnold Circus, Bethnal Green. Fines not exceeding £5 for a first offence and £10 for a subsequent offence may be imposed for contraventions.

LONDON TRAFFIC (MISCELLANEOUS PROVISIONS) (AMENDMENT) REGULATIONS, 1954 (S.I. No. 290): operative April 1, 1954.

The Regulations of 1951 (S.I. No. 1599) which impose certain restrictions on the sale of goods from vehicles and on the waiting, loading and unloading of vehicles in certain streets, no longer apply to parts of Gibson Gardens and Bowling Green Street, Hackney. The parts of Finchley Road, Hampstead, Tottenham Lane, Hornsey and High Street, Uxbridge affected by the regulations are altered, and the regulations are made to apply to certain roads in Sutton and Cheam, Uxbridge and Wanstead and Woodford.

See also Pedestrian Crossings Regulations, 1954, below, p. 394.

Magistrates' Courts

PETTY SESSIONAL DIVISIONS (SHROPSHIRE) ORDER, 1954 (S.I. No. 232): fully operative April 1, 1954.

Certain petty sessional divisions of Shropshire are replaced by the new divisions of Ludlow, Bridgnorth, Condover, Drayton, The Wrekin and Oswestry. The area of the division of Albrighton is redefined to include certain parishes before comprised in the division of Wellington.

PETTY SESSIONAL DIVISIONS (SOMERSET) ORDER, 1954 (S.I. No. 233): fully operative April 1, 1954.

The petty sessional divisions of Bishop's Lydeard and Taunton, the city of Wells and Wells and the borough of

Yeovil and Yeovil are abolished and the new divisions of Taunton County, Wells City and County and Yeovil are created.

PETTY SESSIONAL DIVISIONS (OXFORDSHIRE) ORDER, 1954 (S.I. No. 251): fully operative April 1, 1954.

The existing petty sessional divisions of Banbury and Bloxham, Wootton North, Chadlington, Chipping Norton, the borough of Henley-on-Thames and Henley County are abolished and the new divisions of Banbury and Bloxham, Chipping Norton and Henley are created. The divisions of Ploughley and Wootton South are renamed the divisions of Bicester and Woodstock. The area of the division of Bampton East is redefined.

PETTY SESSIONAL DIVISIONS (LANCASHIRE) ORDER, 1954 (S.I. No. 283): fully operative April 1, 1954.

The petty sessional divisions of the borough of Clitheroe and Clitheroe, the borough of Colne and Colne and the borough of Darwen and Darwen are combined to form the new divisions of Clitheroe, Colne and Darwen respectively. The divisions of Kirkdale, Kirkham and Middleton are renamed the divisions of Liverpool County, Fylde and Rochdale County respectively. Other divisions of Lancashire are altered.

PETTY SESSIONAL DIVISIONS (NORFOLK) ORDER, 1954 (S.I. No. 289): fully operative April 1, 1954.

The petty sessional divisions of the borough of Thetford and of Grimshoe are combined with certain other parishes to form a new division of Thetford and Grimshoe. Other divisions in Norfolk are altered.

Merchandise Marks

MERCHANDISE MARKS (IMPORTED GOODS) NO. 10 ORDER, 1934, AMENDMENT NO. 2 ORDER, 1954 (S.I. No. 217): operative March 13, 1954.

The 1934 Order (S.R. & O., No. 1185) no longer applies to woven piece goods wholly or mainly of jute. Additional methods of applying the indication of origin to cotton grey cloth are permitted.

For penalties for infringement see section 5 of the Merchandise Marks Act, 1926.

Official Secrets

OFFICIAL SECRETS (PROHIBITED PLACE) ORDER, 1954 (S.I. No. 243): operative March 15, 1954.

The Department of Atomic Energy Calder Works, Calderbridge, Cumberland and the Department of Atomic Energy Culcheth Laboratories, Wigshaw Lane, Culcheth, are both made prohibited places for the purposes of the Official Secrets Act, 1911.

Poisons

POISONS LIST ORDER, 1954 (S.I. No. 266): operative April 1, 1954.

The Poisons List is amended so that tri-2(-chloroethyl)-amine and its salts are included among those poisons which are not to be sold except by a person who is an authorised seller of poisons.

For penalties for infringement see section 24 of the Pharmacy and Poisons Act, 1933.

POISONS RULES, 1954 (S.I. No. 267): operative April 1, 1954.

The 1952 Rules are amended so that a container of poison may now be labelled with the name of the poison given in the National Formulary. Tri-2(-chloroethyl)amine and its salts are included in lists of poisons to which special restrictions on sale and delivery apply.

Preparations for the destruction of rats and mice containing not more than 0·1 per cent. of sodium nitrite are exempted from the provisions of Part II of the 1933 Act and of the 1952 Rules.

For penalties for infringement see section 24 of the Pharmacy and Poisons Act, 1933.

Police

CIVIL DEFENCE (POLICE) REGULATIONS, 1954 (S.I. No. 252): operative March 22, 1954; CIVIL DEFENCE (POLICE) (SCOTLAND) REGULATIONS, 1954 (S.I. No. 327): operative March 18, 1954.

The duty of each police authority to train their force for the purposes of civil defence is continued, but such authorities are no longer limited to training requirements in their power to equip the force for civil defence.

The 1952 Regulations (S.I. Nos. 764, 781) are revoked.

ROYAL IRISH CONSTABULARY (WIDOWS' PENSIONS) ACT, 1954 (2 & 3 Eliz. 2, c. 17): operative March 9, 1954.

The Secretary of State is given power, subject to the consent of the Treasury, to make regulations for the payment of supplementary allowances to widows of former members of the Royal Irish Constabulary entitled to pensions and of pensions to such widows who are not so entitled. Payments are to be discretionary and will be made only to persons who satisfy the conditions contained in the regulations, some of which are prescribed in the Act.

Probation

PROBATION RULES, 1954 (S.I. No. 333): operative April 1, 1954.

The salaries of probation officers are increased by £25 a year.

Road Traffic

PEDESTRIAN CROSSINGS REGULATIONS, 1954 (S.I. No. 370): operative July 1, 1954.

The regulations as to pedestrian crossings, first issued in 1951 and since amended, are consolidated with certain further amendments. The principal changes are: (1) there are no longer separate regulations applying to pedestrian crossings in the London traffic area; (2) the approach to a "zebra crossing" must be marked by a pattern of studs on the carriageway except in certain specified cases; (3) the restrictions imposed on the stopping of vehicles on duly marked approaches to crossings are extended; motor-bicycles are made subject to the same restrictions as other vehicles and no vehicle, except pedal bicycles without sidecars, may stop to allow persons to get on or off or to load or unload goods; (4) the regulations do not apply to crossings at which traffic lights are not installed, if the traffic there is normally controlled by the police for periods amounting to at least twenty hours a week; (5) if the Minister of Transport and Civil Aviation so authorises in writing, the width of the stripes on particular crossings may, within certain limits, be greater or smaller than the width prescribed by the regulations; (6) globes marking crossings may be placed on a street refuge or central reservation on a crossing as well as at the ends of the crossing; (7) except in those cases where the Minister authorises a globe to be illuminated by a constant light, the globes at the ends of a crossing must be illuminated by a flashing light; those on a street refuge may be so lit; if at least two globes mounted on separate posts are lit, the failure of the illumination of any of the globes does not prejudice the validity of a crossing; (8) the requirements for the marking of an approach to a " zebra crossing " may be modified or the marking may be dispensed with.

The Pedestrian Crossings (General Regulations) 1951 (S.I. No. 1192) and the Pedestrian Crossings (London) Regulations, 1951 (S.I. No. 1193) are revoked.

Scotland

Children

APPROVED SCHOOLS (CONTRIBUTIONS BY EDUCATION AUTHORITIES) (SCOTLAND) REGULATIONS, 1954 (S.I. No. 371): operative April 1, 1954.

The contribution to be made by an education authority named in an approved school order to the expenses of the managers of the school during the time that the person to whom the order relates is under the school's care is increased from 54s. a week to 66s. a week.

Police

For the duties of police authorites in relation to civil defence, see p. 393, above.

Prisons

PRISON (SCOTLAND) RULES, 1954 (S.I. No. 240): operative March 15, 1954.

The 1952 Rules (S.I. No. 565) are amended. The principal changes relate to sleeping accommodation in open prisons, the making of false and malicious allegations against an officer, failure to return from and breaking of conditions of parole, preventive detention, duties of the medical superintendent, responsibility for the Criminal Lunatics Department and visiting committees to Penningham prison and the police cells at Kirkwall.

Letters to the Editor

Requisites of a Valid Arrest

Sir,

In your January issue Professor Glanville Williams discussed the requisites of a valid arrest, and dealt (at page 19) with the effect of failing to inform the accused of the reason for the arrest. The comparison he there made with the law of New Zealand is in some respects unsatisfactory.

The New Zealand Crimes Act, 1908, s. 61, following the Draft Code of 1879, provides that failure to give notice of the cause of arrest shall not deprive the person making the arrest of "protection from criminal responsibility." A definition section enacts that "protected from criminal responsibility" means "not liable to information, indictment, or proceeding other than a civil action or proceeding." The chief difference between the law of England and the law of New Zealand on this subject is that if a person submits to an arrest, although he has not been told the reason for it, the person making the arrest may be punished criminally in England, but not in New Zealand. The civil remedy available to the person arrested is the same in both countries.

Christie v. *Leachinsky* was a civil case, and the law there laid down is not affected by anything in section 61 of the New Zealand Act. There is no justification for the assertion that under this provision a person is left "without redress." In regard to a claim for damages, the person who comes quietly has the same rights as one who resists, and it cannot be said that the Act "neglects the fact that he has suffered a wrong."

The law of New Zealand is said to create an "undesirable incentive to resist." But it seems unrealistic to maintain that a person who is not told the ground for arrest will offer resistance merely to ensure that the person arresting will expose himself to criminal liability. It is questionable whether the addition of criminal liability gives an ounce of further protection in practice.

Yours faithfully,
I. D. Campbell,
Professor of Law,

Victoria University College, Wellington, New Zealand.

[Professor Glanville Williams writes: "I am grateful for the correction which applies also to the Canadian Code."]

Turning a Blind Eye

Sir,

Perhaps in your next issue Mr. Christopher Williams will give us his views on the neglect of the police and others to enforce many of the provisions of the Sunday Observance Acts.

Yours faithfully,
Messrs. Mayo and Perkins,
Solicitors.

Eastbourne.

Books and Periodicals

Reviews:

Archbold's Criminal Pleading, Evidence and Practice. Thirty-third edition, by T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. London: Sweet & Maxwell, Ltd. 1954. cxciv and 1596 and (index) 95 pp. (£4 10s. net inclusive of Cumulative Supplements for 1954, Noter-up Service, 7s. 6d. a year extra.)

A noticeable effort has been made to renovate Archbold in this edition. The new cases and statutes are, of course, included, but much has been done to improve the previous text. The book has been divided into paragraphs with heavy-type headings, which makes it easier of reference. Short titles of statutes are now given in the text, the citation being left to the index. Someone has done a vast amount of work on the index of cases, which now gives citations for all reports; it is also a considerable improvement that the body of the book gives the Law Report citation wherever the case is reported in that series.

The editors have remedied a number of errors pointed out in a review of the previous edition, and in particular they have rewritten the passages on constructive manslaughter to take account of such cases as *Franklin* and *Andrews* (p. 946). The editors have also done much useful thinking on their own. Thus the Criminal Justice Act, 1948, s. 11, now appears, as it should, on p. 303 (it was overlooked at this place in the previous edition). At p. 1514, a wrong statement of the law in the previous edition (for which an unreported case was cited) is corrected, .and the editors add the important rule in *Ferguson* v. *Weaving*. It is, in fact, a welcome feature of the new edition that the editors have shown themselves ready to cite Divisional Court cases where the same principle applies to indictable offences.

It is hard to stop a standard legal treatise from growing, but the editors have pruned several antiquarian passages and citations. By the way, isn't it time to give up referring (*e.g.*, on p. 1484) to Chitty's *Criminal Law*? This has never been a work of authority, and it has not been thought worth reprinting since 1826. The irrelevant discussion of the tort-felony rule on pp. 302–3 could also go by the board, since it pertains to tort, not to crime.

When we are given so much, it might seem gracious to end the review without further criticism. It is the significance of Archbold as the leading practitioner's book that forbids this. Archbold is such an important legal tool that it is a reviewer's duty to go on grumbling until it is made as efficient for its job as possible. Even a random checking of the text shows that errors and omissions remain. Thus the following come to the eye: on p. 160, it is baldly stated that the endurance of punishment has the same effect as a pardon. This neglects the qualification that the conviction remains for the purpose of increasing the punishment on a subsequent offence—which it would not do if a free pardon were granted. When Archbold was partly responsible for the trouble in *Woolmington* [1935] A.C. 462, it is surprising that *Woolmington* is still not cited on p. 425—see the misleading statement on that page of the burden of proving *mens rea.* On the next page, in discussing the maxim that a person is presumed to intend the natural and probable consequences of his acts, there is no reference to *Steane* [1947] K.B. 997. In paragraph 2697, the sentences which cite *Whitchurch* and *Crossman* respectively are on the same point, though separated in the text, and although the law is treated as being clear in the first place and doubtful in the second. The submission at the bottom of p. 1497 is clearly wrong. It is to the effect that since the Trial of Lunatics Act, 1883, a person can be convicted as abettor of a person who was irresponsibly insane at the time of committing the criminal act. This submission results from the popular misapprehension of the meaning of the special verdict, which one would not have expected to find in a technical work. The special verdict in insanity cases is not, as is so often said, "guilty but insane," but "guilty of the act but insane"; it is not a finding of criminal guilt, and is in law a verdict of acquittal. This being so, the formula introduced by the Act of 1883 can have no bearing upon the decision in *Tyler*.

The reference to section 8 of the Act of 1827 at pp. 1500 and 1506 is misleading. The text makes it appear that the section is limited in its operation to secondary parties, so that it is only principals in the second degree and accessories before who are subject to the special maximum of seven years' imprisonment. The true legal position is as follows. Whatever punishment is laid down by law for the principal in the first degee applies also, without express words, to a secondary party. All that section 8 of the Act of 1827 does is to fix a maximum punishment for felony where there is no express punishment in the statute: it applies primarily to principals in the first degree, though by implication also to secondary parties. If a secondary party comes within this statute, he does so only because the principal in the first degree comes within it. The proper place for citing section 8 is on p. 6, where it does not appear. The true rule for secondary parties is stated on p. 1503, but the only authority there quoted for it, *Sadi*, is not in point. *Dannelly*, on the same page, is improperly stated: the point for which it is cited, which is in any event a trivial one, was not decided by the court, nor was any opinion expressed upon it.

At the bottom of the same page, the citation of *Leddington* is misleading. This case was decided on the special ground that the suicide incited by the defendant had been committeed, so that the incitement merged in the felony. It seems clear that at the present day a successful inciter to suicide would be an accessory: see *Croft*, cited on p. 1502.

On p. 1480, *Hudson* is stated as a procedural case; in fact it decides a point of substantive law. On p. 1481, para. 2713, it should be stated that on a charge of conspiracy to accuse of crime, it is not a defence to show that the prosecutor was guilty of the crime accused, if the defendants had an intent to extort. The indictment on p. 1507 is defective because it does not charge a substantive offence at all; it only discloses an incitement, yet charges the accused as an accessory.

In their preface to the book the editors say that they have "strenuously resisted any temptation or suggestion to include in it disquisitions on the theory of criminal jurisprudence." This apparently means that we must not criticise Archbold for devoting only one page to the general topic of *mens rea*, or for its equally inadequate treatment of other general defences. Though Archbold zealously collects English decisions of all ages and grades of authority, there is never a reference to the important discussions that have appeared in legal periodicals. Since Archbold gives only a bald summary of the effect of a decision, without the reasons and without any reference to criticisms that may subsequently have been expressed in legal writings, it is a poor guide to what the court is likely to do in the future in areas where the law is controversial or obscure. For instance, the pages of this edition leave the reader unprepared for the repudiation of the offence of public mischief which occurred in the Pottery case, *Newland* [1954] 1 Q.B. 158. This deficiency in the book is harmless, provided that the practitioner realises that what he reads in Archbold is legal history, not an intelligent appraisal of current trends.

The editors draw their veil not only over the legal literature of their own country but over all current decisions of overseas courts. It seems that no decisions of other parts of the Commonwealth have been added to the text since the early years of the century. To take one striking omission: *Wheat and Stocks* is cited on p. 1385 not only without mention of the academic criticism of that case, but without mention of its disapproval by the High Court of Australia in *Thomas* (1937) 59 C.L.R. 279. It is as certain as any legal prediction can be that the fallacies of *Wheat and Stocks* will one day be repudiated by the Court of Criminal Appeal or House of Lords; but Archbold gives no hint of this.

The narrow insularity of practitioners' works is not only a misfortune for the English lawyer but a contributory factor in a regrettable breach of Commonwealth comity. There is a one-way traffic in legal decisions, for while overseas courts refer to and consider English decisions, English courts rarely return the compliment. Probably this is not arrogance, but just that the English counsel did not know the overseas cases to cite; and he did not know them because the treatise he used did not mention them.

When all is said, Archbold remains indispensable to the practitioner in criminal cases: a valuable servant, even if a dangerous master. The editors are to be congratulated on the improvements they have now given us; let it be hoped that they will continue their efforts.

GLANVILLE WILLIAMS.

Magisterial Costs and Application of Penalties. Second edition, by Arthur T. G. Brenchley. London: Shaw & Sons, Ltd. 1953. x and 136 pp (no index). (21s. net.)

This is a useful book. It should be of great assistance to justices' clerks and their assistants and to all those who have dealings with Magistrates' Courts.

The book contains a Table of Contents, a Table of Statutes and a Table of Rules and Regulations. That is adequate for the experienced clerk, but an index would have been an improvement.

In the section of the book dealing with the power of the court to order payment of costs reference might have been made to section 85 of the Magistrates' Courts Act, 1952 (costs on abandonment of appeal) and to Rule 24 of the Adoption of Children (Summary Jurisdiction) Rules, 1949, which gives a special power to order costs in adoption cases.

The alphabetical arrangement of the Table of Justices' Clerks' Fees is an excellent feature of the book. It is accurately drawn up and carefully annotated. One note missing is that the Table does not apply to the Metropolitan Stipendiary Courts or the Justice Rooms of the City of London. Section 119 (9) of the Magistrates' Courts Act, 1952, which makes that clear might, with advantage, have been reproduced in Appendix 1 of the book, following section 112.

The book is based on the law as it was on June 1, 1953. Since then the Costs of Poor Prisoners' Defence Regulations, 1930, and the Costs of Poor Prisoners' Defence (Amendment) Regulations, 1944, have been repealed and superseded by the Poor Prisoners' Defence (Fees and Expenses) Regulations, 1953 (S.I. 1953, No. 1429); and the Costs of Poor Appellants and Respondents (Summary Jurisdiction Appeals) Rules, 1933, and the Costs of Poor Appellants and Respondents (Summary Jurisdiction Appeals) (Amendment) Rules, 1944, have been repealed and superseded by the Appeal Aid Certificate (Fees and Expenses) Rules, 1953 (S.I. 1953, No. 1428). The new Rules came into force on October 5, 1953, and increase by 50 per cent. the corresponding fees prescribed in the revoked Rules.

The allocation of penalties has been much simplified by the coming into force of section 27 of the Justices of the Peace Act, 1949, on April 1, 1953. In Part II of the book is set out clearly all that a justices' clerk must do in accounting to the Secretary of State for penalties and other sums received by him by reason of his office.

J. H. CRAINE.

Medical and Scientific Investigations in the Christie Case. By Francis E. Camps, M.D. London: Medical Publications, Ltd. 1953. xxiv and 235 and (index) 6 pp. (30s. net.)

The case of John Reginald Halliday Christie aroused not only public interest, but was also one of considerable scientific interest. In view of the fact that the case relates to a series of murders over a period, the scientific problems associated with the investigations were correspondingly unusual in character and very complex.

The investigations involved an examination of the remains of four bodies and the skeletal remains of two others. Christie relied in the main on natural decomposition as the agents for the disposal of the bodies of his victims, hence the case afforded an opportunity to study, in some measure, the changes which take place after death; it was possible to compare bodies associated with soft tissue in various stages of decomposition (in the house), to those in which soft tissue was completely absent (remains in back garden). Other information obtained related to the period over which spermatozoa can be identified after death, and also the persistence of alcohol and carbon monoxide in the blood after death. Thus, the case provided a unique opportunity to extend scientific knowledge over quite a wide field, irrespective of its particular value as evidence in the case in question.

It is from this angle that in this book the author (and collaborators) have made a valuable contribution to forensic scientific literature, and in particular, forensic medicine.

Although on the title page Dr. F. R. Camps appears as the author, substantial contributions are made by scientists in the several fields concerned in an investigation of this magnitude—in fact, the work clearly indicates the value of team work, not only between scientists, but also with the police investigators.

The book consists of fourteen chapters and ten appendices, and is illustrated by some forty-six excellent diagrams and photographs, including micro-photographs.

Chapter I deals summarily with investigations before the trial and includes the removal of four bodies from the house, and preliminary examination at the mortuary, and the subsequent arrest of Christie.

Chapter II gives the detailed results of the post-mortem examination of the four bodies. The evidence in regard to the cause of death in three cases justifies the opinion that the cause of death was due to strangulation, whilst under the effects of carbon monoxide, by a cord or ligature; histological features in the region of ligature mark are discussed. In the case of body IV the evidence was less definite—no carbon monoxide was present, although death was due to asphyxia.

Chapter III deals with the laboratory examination, by L. C. Nickolls of the Metropolitan Laboratory, of material from the house, from the bodies, from the garden, and material from the accused after arrest.

It was in the blood from bodies I, II and III that evidence of carbon monoxide was found the amount being 36, 40 and 34 per cent. respectively, whilst in body IV, no carbon monoxide was present. Examination of the blood for alcohol showed alcohol in body II only (0·240 per cent.).

An interesting result was the evidence of spermatozoa in a remarkable state of preservation from body I.

Chapters IV and V relate to the examination by Dr. R. J. Harrison of the bones found in the garden and of the skeletons in respect of sex, age and stature. In the case of skeleton I an almost complete skeleton was reconstructed, whilst skeleton II was partially reconstructed.

Chapter VI, by Dr. A. C. Hunt, describes in considerable detail the examination of jaws and teeth. The teeth often remain intact after the soft tissues have disappeared, and many persist even after some bone disintegration has taken place. From the teeth, the authors show how valuable information can often be obtained relative to not only sex and age, but also past history, and something of the habits of the individual, thus obtaining valuable corroborative evidence of identification. This section is of particular interest to dentists and indicates the value of proper dental records relative to patients.

Chapter VII deals with the examination of bones and associated material with the view to obtaining information as to the time of death and burial of the two skeletons. The exhumation of Beryl Evans is described in Chapter VIII. One purpose of this exhumation was to examine the body for evidence of carbon monoxide, and secondly to determine whether or not there was agreement of the pubic hairs with those found in a tin box at No. 10 Rillington Place.

Chapter IX is devoted entirely to carbon monoxide poisoning, consideration of findings in relation to the methods described by Christie.

Chapter X deals briefly with the trial and the Scott Henderson Inquiry.

The volume concludes with ten appendices in which are included the statements of Christie, trial exhibits, post-mortem reports on Beryl and Geraldine Evans (by Dr. R. D. Teare), inquests on skeletons, etc.

Much of the work described is rather in the nature of research, and although not of direct value in the *Christie* case, may have very valuable applications in the future; the book is a valuable source of information for future reference by pathologists interested in forensic investigation.

The publishers are to be congratulated on the production of the volume; it is well got up and the reproduction of illustrations excellent.

J. B. FIRTH.

The Hallucinogenic Drugs. A Neglected Aspect of Forensic Medicine. By Donald McI. Johnson, M.A., M.B., B.CH., Barrister-at-Law. London: Christopher Johnson. 1953. 46 pp. (no index). (5s. net.)

The author indicates in a foreword that he hopes the "thesis," although strictly a scientific document, will be read by laymen, and a short glossary is appended giving the meaning of scientific terms which it has been found necessary to use.

Part one deals with the insanity-producing drugs Indian hemp and datura. The author laments the lack of consideration given to these drugs in medical literature, including pharmacology or toxicology; textbooks only mention in a disconnected way that certain drugs produce hallucinations and insanity. He discusses the various symptoms of Indian hemp (*cannabis*, *marihuana*) intoxications. Although the drug has, in one form or another, been in use for a long time in Eastern countries, the Indian hemp habit is rapidly on the increase in the United Kingdom, the main present-day form being as "reefer" cigarettes in which it is smoked mixed with tobacco. Datura, a solanaceae—the herb of the sorcerers—is sometimes blended with Indian hemp and sometimes with opium.

The author complains that whilst forensic medicine is science in its relation to the courts of law, in general "forensic medicine is preoccupied with the dead body," but in its widest sense should also apply to the living. "There is one class of person who is in an anomalous position of being alive in fact but dead as regards the law. That is, a certifiable lunatic."

The author visualises a misuse of such drugs either by the criminal himself or on his victim whereby a type of insanity is produced which can be confused with or indistinguishable from natural insanity. In such cases a doctor "particularly an English general practitioner—totally unfamiliar with the hemp drugs as are most doctors at present—could, under present circumstances, be easily deluded into issuing a certificate of Lunacy in respect of the unfortunate victim."

It is this theme which appears to be the principal worry of the author —the lack of effort and ability to differentiate between a temporary insanity due to drugs and a general natural insanity condition.

Part Two is an account of personal observations.

Part Three gives an account of "The Case of Mrs. Cynthia Elsie White," a "good-time girl" whose mental condition was due to excessive smoking of reefer cigarettes, and who was detained in a mental hospital without the cause of her condition being fully investigated.

A paragraph from the summary indicates the author's views—"In a brief disquisition on forensic medicine some indication is given of the complexity of the medico-legal problems that might arise in the event of the use of these drugs as poisoning agents. The convenience of such drugs to the poisoner is pointed out; evidence is quoted to show that intoxication mania from Indian hemp is indistinguishable from mania through natural causes except by the shortness of its duration. There is definite lack of awareness of the possibility of the use of such drugs in our present medico-legal knowledge."

The book is interesting reading, and in particular to psychiatrists. The author's point of view is no doubt influenced by his own personal experience.

Appendix 1 includes a copy of a letter relating to the author, the opening paragraph of which is as follows, "Dr. Donald McI. Johnson has, in addition to being a client of mine, been a friend of thirty years standing. During the whole of that time I have regarded him as being as sane as anyone of my acquaintance."

"It was, therefore, with feelings of the greatest surprise that I heard in October, 1950, that he had suddenly been certified insane and sent to a mental hospital."

J. B. Firth.

Books Received:

Forensic Medicine. Third Edition. By Douglas J. A. Kerr, M.D., F.R.C., P.E., D.P.H. London: Adam & Charles Black. 1954. xii and 350 and (index) 11 pp. (28s. net.)

Shaw's Evidence in Criminal Cases. Fourth Edition. By Michael Lee, Barrister-at-Law. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 1954. li and 292 and (index) 18 pp. (22s. 6d. net.)

Articles:

Modern Law Review, Vol. 17.
Merchandise Marks Act, 1953, p. 142.

Solicitor, Vol. 21.
Magistrates' Notebook, p. 64.

Law Journal, Vol. 104.
Attempt and preparation, p. 211.

Justice of the Peace, Vol. 118.
The execution of means inquiry warrants, p. 164.
Scruples (professional etiquette), p. 165.
Magistrates' Courts Act, 1952; section 97—warrants, p. 179.
Cross-examination, p. 180.
Statistics and the probation service, p. 197.
Money without menaces (fines), p. 212.
Postcards and policemen (obscenity), p. 213.

Police Review, Vol. 62.
Principals and accessories, p. 204.

Police Chronicle.
The use of photographs by police for identification, March 19, 1954, p. 4.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Written notice of summary charges

The defence of a person charged with an offence may be seriously prejudiced where that person does not know until the last minute the precise nature of the charge against him, and this has happened in certain cases where no warrant or summons has been issued. An attempt to meet the difficulty was made in clause 3 of the Law Reform (Miscellaneous Provisions) Bill, now the Law Reform (Enforcement of Contracts) Bill, but the Bill has now been amended and this clause dropped. During the debate on the amendment it was announced that a circular is to be issued by the Home Office to police officers directing them that where a charge is made the accused person is to be given a written notice, containing a copy of the actual entry in the charge sheet and giving particulars of the offence stated in simple language.[1]

Homosexuality

Replying to a debate on homosexuality, Sir Hugh Lucas-Tooth announced that the Home Secretary and the Secretary of State for Scotland have decided to appoint a committee to examine the problem of homosexuality and the law relating to prostitution and solicitation generally. It may, however, be some little time before the membership and terms of reference of the committee can be announced.[2] This subject was recently considered in *The Times* and debated in the House of Lords.[3]

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[1] H.C. Debates, Vol. 526, col. 745 *et seq.*, April 9, 1954.
[2] H.C. Debates, Vol. 526, col. 1745 *et seq.*, April 28, 1954.
[3] *The Times*, May 13, 14; H.L. Debates, Vol. 187, May 19.

Police discipline

A case of some interest to the police which has recently been heard by the Divisional Court and the Court of Appeal is *Ex p. Fry* ([1954] 1 W.L.R. 730). A fireman disobeyed a order to clean an officer's uniform and was punished by a chief fire officer with a caution. The fireman applied for leave t move for certiorari to quash the order of the chief fire officer. The Divisional Court held that it would not interfere with the discipline of police forces, fire brigades or similar bodies, which in their nature must be generally known as disciplined services, and where the chief officer was simply acting as an officer in the matter of discipline. The Court of Appeal, in the exercise of its discretion, also refused the application.

This action was based on the Fire Services (Discipline) Regulations, 1948, regs. 1, 2, 5, 8 and 13; similar regulations are to be found in the Police (Discipline) Regulations, 1952; they are regs. 1, 6, 8 (2), 12 and 15.

Lawyers' latin

We have been asked to add to the glossary at the back of this *Review* "the accepted pronunciation of latin phrases for the benefit of those of us who learned at school the modern latin pronunciation." We hesitate to comply with this request because the product is even more barbarous than the lawyers' mode of pronunciation. Thus, the phonetic spelling of certiorari would be "sir-she-or-*rare*-eye." If these words are pronounced as ordinary English words twice slowly and a third time quickly, putting the accent on the italicised word, the resulting sound is very like what a lawyer says. If we get any substantial number of requests we will make the effort and risk the abuse.

Decrease in crime

The provisional figures for 1953 show that there has been a substantial decrease in juvenile delinquency. 22,508 children under fourteen and 16,182 young persons, aged between fourteen and seventeen, were found guilty of indictable offences, while the comparable figures in 1952 were 26,212 and 18,866.

The number of indictable offences known to the police was 472,989 as compared with 513,559 in 1952.[4]

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[4] H.C. Debates, Vol. 526, col. *123*, April 14, 1954.

Corporal punishment was administered a little more frequently in remand homes and approved schools during 1953. The administration of such punishment is a matter for the authorities of each home or school, but the question of discipline, treatment and punishment in such institutions is kept under constant review by the Home Secretary.

During 1953, 2,236 inmates absconded from remand homes and approved schools. All save a very few were subsequently apprehended.[5]

Prisons

The work given to prisoners to keep them usefully employed, the transfer of prisoners from one place of detention to another, the release of old and infirm prisoners, the remission of sentence for periods spent in mental hospitals by prisoners, and the care of discharged prisoners have all been the subject of parliamentary questions recently. The Home Secretary does not consider it necessary to set up any new body responsible for the care of discharged prisoners, but he is ready to consider any specific proposals for improving the existing arrangements for the care of homeless ex-prisoners.[6]

Crime Book Week

The Crime Writers' Association is organising a Crime Book Week from June 14 to June 19. An exhibition showing the historical development of crime books and their significance in the social life of the country will be held at the premises of the National Book League, 7 Albemarle Street, and lectures will be given there each day, Lord Justice Birkett being among the speakers.

Police Report

The Report of H.M. Inspectors of Constabulary for the year ending on September 30, 1953, has been published.

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[5] H.C. Debates, Vol. 526, col. 1765, April 29, 1954.

[6] H.C. Debates, Vol. 526, cols. *60*, *61*, April 8, 1954; col. 1325, April 15, 1954; Vol. 527, col. 559, May 6, 1954.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Arrest for Felony at Common Law

By Glanville L. Williams, LL.D.(Cantab)
Barrister-at-Law, Quain Professor of Jurisprudence in the University of London

The principal power of arrest at common law is in respect of felonies. In the words of the Royal Commission on Police Powers, 1929, "felonies constitute an archaic category of offences which include most, but not all, of the crimes now regarded as serious, and in addition some offences, such as petty larceny, of quite minor importance." Examples of felonies are treason, murder, manslaughter, nearly all offences with explosives, wounding with intent to do grievous bodily harm, rape, carnal knowledge of girls under thirteen, abortion, bigamy, buggery, burglary, sacrilege, housebreaking, robbery, embezzlement, larceny, receiving stolen goods, arson, counterfeiting coins, attempted murder and attempted arson.

Notwithstanding all the statutory extensions of the power to arrest, the common-law power remains of chief importance. This is because most summary arrests are for larceny, or for crimes into which an intent to commit larceny enters as an ingredient (burglary, housebreaking, robbery). Arrest for homicide is also important in practice.

When stating the power to arrest for felony, many books add "or dangerous wounding." This addition is no longer necessary, since a wounding with intent to do grievous bodily harm is now felony by statute (Offences against the Person Act, 1861, s. 18).

The constable's discretion

Formerly the rule was that if a constable were called on by a private citizen of repute to arrest a person for felony, he was in duty bound to do so (*per* Lord du Parcq in *Christie* v. *Leachinsky* [1947] A.C. 573 at 596; *cf. Ledwith* v. *Catchpole* (1783) Holt 483n.). Thus the constable had no discretion. But this was at a time when nearly all felonies were, in legal theory, punishable by death. At the present day, when an offender may be given an absolute discharge even for a felony like larceny or bigamy, the old rule is obviously inappropriate, and may be reckoned as obsolete.

Reasonable suspicion

When the police arrest for felony, the felony alleged need not in fact have been committed by the person arrested or indeed by anyone. It is enough that the policeman making the arrest reasonably suspects him of the felony.

Although the rule is sometimes stated in terms of "reasonable belief," "suspicion" is a better word because the evidence before the officer need not be such as to cause him positively to believe that the accused is an offender. It is enough that there is evidence pointing in that direction with sufficient cogency to justify an arrest. That the power is to arrest on suspicion was recognised by the Royal Commission on Police Powers, and is supported by judicial utterances. Thus Scott L.J., who was by no means disposed to interpret the power widely, said: "The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called on before acting to have anything like a *prima facie* case for conviction; but the duty of making such inquiry as the circumstances of the case ought to indicate to a sensible man is, without difficulty, presently practicable, does rest on them; for to shut your eyes to the obvious is not to act reasonably" (*Dumbell* v. *Roberts* [1944] 1 All E.R. 326, 329). See also *per* Slesser L.J. in *McArdle* v. *Egan* (1933) 150 L.T. 412, C.A., and the speech of Lord du Parcq in *Christie* v. *Leachinsky* [1947] A.C. 573 at 597.

The point will become clearer if it is realised that an arrest is not the same as the initiation of a prosecution against the offender. The task of formally charging the person arrested devolves on the station officer, and it is probable that the prosecution proper does not commence until the accused is brought before the magistrates. It is not lawful for anyone to prosecute unless he believes that the accused is guilty (*per* Atkin L.J. in *Meering* v. *Grahame-White Aviation Co.* (1919) 122 L.T. 44 at 56, C.A.), but the constable who arrests has not reached this stage and need not believe that the accused is guilty or that he will probably be convicted. The question is whether the accused is marked out for such suspicion that it is reasonable to arrest him. This may not be a very helpful formulation, and indeed it is no more than a restatement of the rule, but it appears to be the best that can be done in the way of abstract statement. The rule can be given a firmer outline only by taking some practical examples.

Where a number of persons are involved in equal suspicion, it is not lawful to arrest them all. The suspicion must be focused upon a single person before he can be pulled in. Thus where a crime is committed and a dozen people are suspected simply on the ground of *modus operandi*, they cannot, as the Royal Commission pointed out (Cmd. 3297, pp. 57–8), be lawfully arrested. It makes no difference that all are hardened criminals and that arresting them would induce those who are innocent to establish a satisfactory alibi. According to normal English police practice, which we pride ourselves stands far apart from that prevailing on the Continent, the main inquiries must be made before the arrest of the suspect, not after.

There may be some exceptional situations where alternative suspects may lawfully be arrested. The American *Restatement of the Law of Torts*, § 119, Illustration 2, puts the following case. A sees B and C bending over a dead man, D. B and C each accuse the other of murdering D. A is not sure that either B or C did the killing, but according to the *Restatement* he has a reasonable suspicion that either B or C killed D. A is therefore entitled to arrest either or both.

Suppose that a person is found to have passed a forged note. This alone is not sufficient to justify his arrest on a charge of uttering, for he may not have known that it was forged. Among the additional circumstances that may be considered to justify the arrest are the fact that the note was passed soon after being forged, or that the suspect had improperly come by the note, or had given a false or unsatisfactory account of it, or had paid it out of the ordinary course of trade, or had left the country in an unusual manner (*Mure* v. *Kaye* (1811) 4 Taunt. 34 at 43).

It has already been mentioned that a constable was formerly under a duty to arrest for felony when called upon to do so by a private citizen of repute. Although the duty is obsolete, the question arises whether such an instruction gives the constable legal justification for arresting. According to the old authorities it did. Any other rule, said the court in 1780, would be "inconvenient and narrow; because, if a man charges another with felony, and requires an officer to take him into custody, and carry him before a magistrate, it would be most mischievous that the officer should be bound first to try, and at his peril exercise his judgment on the truth of the charge. He that makes the charge should alone be answerable" (*Samuel* v. *Payne* (1780) 1 Doug. 359; *cf. Hedges* v. *Chapman* (1825) 2 Bing. 523; *Cowles* v. *Dunbar* (1827) 2 C. & P. 565). But the law changed in 1858, when it was held that an unreasonable charge does not justify a constable in arresting, even though the person making the charge expressly requires him to arrest: *Hogg* v. *Ward* (1858) 3 H. & N. 417. The facts were that a travelling showman saw the plaintiff, a master butcher, at a fair, in open possession of a leather harness; he thereupon told a constable that it was harness which had been stolen from him the year before, and directed him to take the plaintiff into custody. The constable went to the plaintiff and asked him where he got the harness, to which the plaintiff answered that he had bought it for a shilling from a man he did not know. Upon this the constable took him into custody. The arrest was held unreasonable and therefore illegal. Bramwell B. alone qualified the decision by saying that "if a man comes to a constable and charges another person *simpliciter* with felony, the constable would be justified in acting on the charge"; he need only consider its reasonableness if the circumstances are stated. It may be doubted whether, at the present day, even this qualified recognition of the older rule would be upheld. According to the prevailing view, the overriding rule is that the constable must "have reasonable cause to suspect that the plaintiff had committed felony" (the direction to the jury in *Beckwith* v. *Philby* (1827) 6 B. & C. 635). The allegation of a third party, or the report of another constable, is one factor that may be considered (*per* Lord Wright in *McArdle* v. *Egan*, above); in appropriate circumstances it may, of course, be sufficient by itself, for a constable may have reasonable suspicion of crime although he has not himself made inquiry into the facts (*per* Lord du Parcq in *Christie* v. *Leachinsky* [1947] A.C. 573 at p. 597). The rule was perhaps best stated by Scott L.J. in *Dumbell* v. *Roberts*, above, in the following words. The police, he said, are required "to be observant, receptive and open-minded and to notice any relevant circumstance which points either way, either to innocence or to guilt. They may have to act on the spur of the moment and have no time to reflect, and be bound, therefore, to arrest to prevent escape; but where there is no danger of the person who has *ex hypothesi* aroused their suspicion, that he probably is an 'offender' attempting to escape, they should make all presently practicable inquiries from persons present or immediately accessible who are likely to be able to answer their inquiries forthwith. I am not suggesting a duty on the police to try to prove innocence; that is not their function; but they should act on the assumption that their *prima facie* suspicion may be ill-founded." Damages awarded against the police for wrongful arrest may be punitive, and "the more high-handed and less reasonable the detention is, the larger may be the damages."

It may be taken, then, that under the present law the police have no special privilege in trusting the allegation of a third person. They must consider such circumstances as the repute of the person making the charge, and that of the person against whom the charge is made. The rule is the same as that for arrests by a private person, which was stated by Lord Hatherley L.C. as follows. "Information given by one person of whom the party knows nothing, would be regarded very differently from information given by one whom he knows to be a sensible and trustworthy person. And the question whether or not a reasonable man would or would not act upon the information must depend in a great degree on the opinion to be formed of the position and circumstances of the informant, and of the amount of credit which may be due under those circumstances to the person who thus conveyed the information" (*Lister* v. *Perryman* (1870) L.R. 4 H.L. 521 at 531).

The fact that the informant is trustworthy may, of course, appear from the interview which the police give him, even though they did not previously know of him as a trustworthy person (*People* v. *Wallace* (1929) 245 Mich. 310, 222 N.W. 698). It seems clear that an anonymous communication would not be a sufficient ground of suspicion in itself, but it may be enough if borne out by some ascertained facts. See the American cases of *People* v. *Guertins* (1923) 224 Mich. 8, 194 N.W. 561; *People* v. *Ward* (1924) 226 Mich. 45, 196 N.W. 971.

It seems that the police would not usually be justified in acting merely on the allegation of a confessed accomplice of the person arrested, nor in apprehending a person as receiver merely on the allegation of the thief (*Isaacs* v. *Brand* (1817) 2 Stark. 167).

Where the police informant states not what he has himself witnessed but merely what he has been told by others—where, in short, he reports hearsay,—that may be a circumstance so impairing the credit of his testimony that the police ought not to act upon it without verification. Where possible, it would be a counsel of prudence for the police to verify such indirect testimony. There is, however, no absolute rule against the right of the officer to rely on hearsay evidence in deciding whether to make an arrest. Where the informer is a trustworthy person, circumstances may make it reasonable to credit his allegation: and particularly where he reports not merely that a fourth party made the charge, but that this fourth party made it in the presence of the informant to the accused himself, and persisted in it after the accused denied it (*Lister* v. *Perryman*, above). Similarly, it would be reasonable for one police force to act on the specific advice of another force, even though the information comes only over the telephone. Knowledge that a warrant of arrest for felony has been issued against the person arrested is itself sufficient ground at common law, and it makes no difference that the arrester mistakes the precise charge specified in the warrant, as where the warrant is for forgery and he arrests for embezzlement (*Creagh* v. *Gamble* (1888) 24 L.R.Ir. 458). At the present day the common-law power would not be needed in such circumstances, because the policeman who arrests could rely on the warrant, which since the Criminal Justice Act, 1925, need no longer be in his possession when he arrests. A private person, who cannot execute a warrant, would still need the protection of the common law.

In *McArdle* v. *Egan*, above, Lord Wright inclined to say that the police may attach some weight to the criminal record of the accused; and this seems clearly right. They may also take into account the answers given by the accused to questions (*Beckwith* v. *Philby*, above). May they take into account his refusal to answer questions? It may be said to be the constitutional right of a man to refuse to answer incriminating questions, so that his refusal to answer is not a circumstance of suspicion. But this would appear to be too legalistic a view, for innocent people do in fact help the police in their inquiries, and the silence of the accused is even a circumstance to which the judge may draw the jury's attention. After all, the policeman is not trying the guilt of the accused, but is only making an administrative decision whether to arrest. On the whole the better view is that silence may be taken as a corroborative circumstance of suspicion.

Running away would certainly be corroboration. In an American case, an officer saw two persons running at night, one chasing the other and calling "Stop thief." It was held that this gave the officer reasonable ground to believe that the one having the lead had committed a felony (*People* v. *Kilvington* (1894) 104 Cal. 86, 37 Pac. 399).

The reasonableness of the officer's suspicion is relevant where he is being sued for the tort of false imprisonment, for this tort can be committed negligently. It is not so certain that an unreasonable suspicion would make him guilty of the crime of false imprisonment. This crime requires *mens rea*, and it would seem on principle that even an unreasonable suspicion should be sufficient to exclude criminal responsibility.

Liability of informant

A policeman will usually require a private informant to give in charge the person to be arrested; the private informant will then be liable for false imprisonment if the arrest be wrongful (*Stonehouse* v. *Elliott* (1795) 6 T.R. 315), though the policeman will be liable as well if the arrest is wrongful on his part. (An arrest may, of course, be lawful although the suspicion turns out to be ill-founded.) If the private informant does not direct an arrest, but merely lays the facts before the officer, he will not be liable for false imprisonment, but the responsibility for this tort will rest solely with the officer; however, the private informant will be liable for the tort of malicious arrest if malice can be proved against him, and if he acted without reasonable cause.

Reasonable cause: the function of the judge and jury

It was originally thought that the question whether a suspicion was reasonable was entirely one for the jury, in a proceeding against the arrester for false imprisonment (*Beckwith* v. *Philby*, above). Later, however, the courts ruled that the judge had a part to play in deciding the question. In *Davis* v. *Russell* (1829) 5 Bing. 354 it was held that the question whether the facts, if believed, give probable cause (*i.e.*, were such as to make the officer's suspicion reasonable) is for the judge. If he thinks they do, he leaves them to the jury to decide whether they are believed. There is some confusion in the judgments on the question whether the jury may independently consider the question whether the suspicion was reasonable, or whether they must take this issue as decided by the judge. It has since been settled that the question is entirely one for the judge, who may direct the jury to find that, given their belief in certain facts, the suspicion was reasonable (*Hailes* v. *Marks* (1861) 7 H. & N. 56; *per* Lord Hewart C.J. and Slesser L.J. in *McArdle* v. *Egan*, above; *cf. Hill* v. *Yates* (1818) 2 Moo.C.P. 80). Alternatively, the judge may take a special verdict and then base his ruling upon it. If the facts are not controverted he may decide in favour of reasonable cause without leaving the issue to the jury at all (*per* Bosanquet J. in *Broad* v. *Ham* (1839) 5 Bing.N.C. 722 at 726). Since the question is one for the judge, it is fully open to review on appeal (*Lister* v. *Perryman*, above). These rules apply not only to arrest for felony, but to arrest under statutory powers where reasonable suspicion is in issue (*Howard* v. *Clarke* (1888) 20 Q.B.D. 558).

The law as so settled is of considerable importance for the protection of the police, because the jury are too wayward a tribunal to be entrusted with the question of reasonable cause. Where the person arrested turns out to be innocent, the jury may award him damages out of misguided sympathy, ignoring the requirement of public policy that a *bona fide* arrest should not be penalised. In *Lister* v. *Perryman*, some of their Lordships were disposed to criticise the law, but they did not advert to this sound reason of policy behind it. As Pollock C.B. observed, if the law were otherwise the administration of justice would be uncertain, for the experience of most judges must have afforded them opportunities of observing that evidence which in a criminal court would be sufficient for conviction, when the party is accused of a wrong, may have a different effect with a jury when the same person seeks to vindicate a right (*Hailes* v. *Marks*, above). The case of *Howard* v. *Clarke*, already referred to, is a good example of intervention by the judges to correct an erroneous verdict by a jury.

Reasonable cause: the burden of proof

The case of *Lister* v. *Perryman* (1870) L.R. 4 H.L. 521 was an action for false imprisonment, not malicious prosecution; the headnote is erroneous on this. Lord Colonsay, at p. 542, remarked that the burden of proving that the defendant's suspicion of felony was unreasonable was on the plaintiff, the person who was arrested; it was not for the arrester to prove that his suspicion was reasonable. Commenting upon this, Hawkins J. said that Lord Colonsay must have intended to refer only to actions for malicious prosecution; in an action of trespass (as an action for false imprisonment is), all justifications are upon the defendant (*Hicks* v. *Faulkner* (1878) 8 Q.B.D. 167 at 170). Hawkins J.'s opinion is undoubtedly correct as a matter of legal history, but it hardly represents the social policy of the matter. The arrester must, of course, give evidence of the grounds on which he claims that his suspicion was reasonable, so that the evidential burden may be said to rest on him (*Mure* v. *Kaye* (1811) 4 Taunt. 34; *Feggett* v. *Barker* (1860) 2 F. & F. 248). But in the event of a conflict of evidence, the persuasive burden should as a matter of policy be regarded as resting on the plaintiff suing for false imprisonment, for the public interest in the arrest of suspected felons is greater than the temporary inconvenience to which innocent persons may be put if mistakenly accused (*cf. per* Lord Mansfield in *Ledwith* v. *Catchpole* (1783) Holt 483n. at 484n.). Opinions like those of Lord Colonsay and of the judges in *Howard* v. *Clarke* (1888) 20 Q.B.D. 558 are probably sufficient authority for denying, in this particular context, the ancient principle applicable to the action of trespass. Even if private persons are still subject to the old law, there is the authority of *McCloughan* v. *Clayton* (1816) Holt 478 for saying that a constable is in a favoured position: in an action for trespass against him he may (unlike a private person) justify under the general issue, from which it seems clearly to follow that no burden of proof rests on him.

Unreasonable cause: the problem of "second sight"

It has been held in most of the American states as a matter of common law that where there is power to arrest upon reasonable suspicion, a mere guess as to guilt is not enough. "Second sight" is not permitted, even if it turns out to be correct. Consequently the paradoxical situation may there arise that an arrest for felony is unlawful, and renders the arrester liable to an action for damages and a prosecution for assault and false imprisonment, although the person arrested proves to have been in fact guilty of the crime. It is true that the damages or punishment awarded in the proceedings just mentioned would not be likely to be more than nominal; but a more important consequence of the illegality of the arrest is that the person arrested is entitled to use force (apparently, even against the police) to save himself from arrest. This curious position has been rectified by statute in many American states, and "second sight" is also permitted by the American Law Institute's Model Code of Criminal Procedure, section 21. Even those states still adhering to the older rule may admit evidence of the suspect's guilt to corroborate the officer's story that he was behaving in a guilty fashion (*State* v. *Grant* (1883) 79 Mo. 113).

In England this question has not received full judicial consideration. It is generally said that to justify an arrest for felony the officer must reasonably suspect the person arrested of the felony; but in the cases in which this statement is to be found, the person arrested was in fact innocent, so that the problem of " second sight " did not arise. There is, however, one case appearing to be in point. This is *Dadson* (1850) 2 Den. 35, where D arrested P for cutting and stealing wood; in itself P's act was a summary offence, but P had twice been convicted of the offence before, and therefore his act on this occasion was a felony. D did not know that P had previously been convicted. It was held by the Court for Crown Cases Reserved that D was rightly convicted for shooting at P in order to prevent his escape, because the arrest was unlawful in the absence of knowledge by D of the facts making it lawful. The judgments are not fully reasoned, and they are perhaps open to question (Williams, *Criminal Law*, The General Part, § 7).

Relevance of the officer's belief

In the situation just discussed, the officer believes that the suspect has committed felony, but his belief is unreasonable. A converse situation is where the officer does not believe that the suspect, whom he arrests, has committed felony, but if he had suspected him of felony his suspicion would have been reasonable. In other words, it may happen that the officer arrests because there is evidence on which a reasonable man would think it proper to arrest, though actually he himself does not believe that the suspect committed the crime—for example, because he knows that the suspect is a man of excellent character and cannot bring himself to believe the evidence against him. Is the arrest lawful? On the one hand, it may be argued that it is not: that the arrester must both believe, and have reasonable ground for his belief; the presence of reasonable ground is insufficient if he does not in fact believe. Best C.J. appears to have taken this view when he said that even though (in an action for illegal arrest) the judge rules in favour of probable cause, on the assumption that the facts were believed, yet if the constable "acted without giving credit to the statement made to him by" the accuser, the verdict ought to be against him (*Davis* v. *Russell* (1829) 5 Bing. 354). For the contrary opinion, it may be said that the duty of the officer is to proceed on the facts as they would appear to a reasonable man; he ought not to be required to pledge his personal opinion. He may even be acting under orders, and it would be difficult for him to disobey a lawful order merely on the ground of a personal and unreasonable opinion. This more generous interpretation of the legal power is perhaps supported by the dictum of Scott L.J. quoted above, p. 409. The American *Restatement of the Law of Torts*, § 119, Comment *j*, asserts that the officer need not believe that the person arrested has committed the crime.

Whatever the rule for arrest, it seems that a person commencing a prosecution must himself believe in the guilt of the accused. The authority for this is *Broad* v. *Ham* (1839) 5 Bing.N.C. 722, which was an action for malicious prosecution. The judge told the jury that if the defendant himself believed the plaintiff had not committed a felony, that was some evidence of absence of probable cause. On appeal this direction was upheld, and the court even seemed to say that it would be not merely some evidence, but sufficient evidence of lack of probable cause. Erskine J. said: "It would be a monstrous proposition, that a party who did not believe the guilt of the accused, should be said to have reasonable and probable cause for making the charge." Thus it seems that even if the constable may be justified in arresting when he does not himself believe in the truth of the charge, he would not be justified in signing the charge sheet. (*Cf. Lister* v. *Perryman* (1870) L.R. 4 H.L. 521 at 530.) The decision in *Broad* v. *Ham* must, however, be considered in the light of the quite common practice of prosecuting for the gravest crime which may possibly be shown by the facts, leaving it to the court of trial to convict of some lesser crime which may be indicated—*e.g.*, prosecuting for murder notwithstanding strong evidence of provocation, which may be sufficient in law to reduce the crime to manslaughter. There would seem to be no reason to doubt that this practice is lawful.

Need the officer fear an escape?

Suppose that the officer reasonably suspects that a felony has been committed by a certain person; is that sufficient to give him power to arrest without warrant, or must he also fear that the suspect will escape if not immediately arrested? The answer given by the court in *Davis* v. *Russell*, above, was that the question of escape is irrelevant. The facts were that the plaintiff was a respectable woman who was taken from her bed at night to prison. It was held that if the constable reasonably suspected her of theft, the arrest was justified, without proof that he feared she might escape if he did not apprehend her. Park J. said: "The circumstance of a felony having been imputed to the plaintiff was a sufficient reason why the constable should apprehend an escape"; and Burrough J. agreed.

In assessing the relevance of this decision at the present day, one must remember the extreme severity of the punishment of felony at the time when it was decided (1829). When felonies were capital, there was obviously a considerable likelihood that anyone accused of felony might attempt to escape. One would hope that no policeman at the present day would behave as did the constable in *Davis* v. *Russell*, and the arrest might quite possibly be pronounced illegal. On the other hand, such judicial authority as exists is against this kind of restriction on the power of arrest. In *Mure* v. *Kaye* (1811) 4 Taunt. 34 at 38, Mansfield C.J. implied the opinion that a power of arrest without warrant is not displaced merely by the circumstance that there is time to obtain a warrant. Again, it may be argued that Parliament has recognised arrest without warrant as a normal way of initiating criminal proceedings, even where there is little likelihood that the suspect will attempt an escape; for it has given the police power to release on bail those who, having been arrested without warrant, may be trusted not to escape after the recognisances have been taken. It is perhaps possible to argue that this power may properly be exercised where facts discovered subsequent to the arrest show that the accused may safely be released, but that where facts known at the time of the arrest indicate that it is a case for bail without surety, the arrest should normally be on warrant. Arrest without warrant should be the exception rather than the rule: where there is time and opportunity to procure a warrant, this should be done. Yet the general police practice is not to obtain a warrant if there is the legal power to arrest without one; and it is also common for the police to arrest with the full intention of granting bail. At present there is no judicial authority for saying that an arrest, otherwise valid, is unlawful because unnecessary.

The distinction between peace officers and private persons

The power of arrest hitherto considered is possessed by peace officers. At the present day this term means, primarily, constables; but it also includes justices of the peace, sheriffs and under-sheriffs, coroners (Hale, P.C. ii 86), and prison officers (Prison Act, 1952, s. 8).

At common law, that is to say apart from statute, the police have little greater power of arrest than a private person. This was expressed vividly by Sir James Fitzjames Stephen when he said that " with some few exceptions a policeman is a private person paid to perform as a matter of duty acts which, if so minded, he might have done voluntarily." The exceptions to which Stephen refers have swelled enormously since his day, but the breadth of the private citizen's power to arrest is still a peculiarity of the Anglo-American legal system; on the Continent, the powers of the private citizen are much more narrowly circumscribed. However, even in the common-law countries the theoretical power has largely gone out of use. Except in case of extreme urgency, it is preferable for an arrest to be carried out by a policeman, who is trained in the proper procedure and who is far less likely to be resisted or assaulted than a private individual. Where a private person effects an arrest, he is generally a night watchman or "store detective" or other person employed to watch for criminals. In addition, a layman may arrest without realising it: when he detains a suspect and sends for a constable to " arrest " him it is really his own arrest from the beginning. Even when he does nothing but direct the constable to arrest, it is in law his arrest, as well as that of the constable.

The only difference between the powers of the police and of others in this respect is that a private person must show not only that he reasonably suspected a felony to have been committed, but also that a felony of the type in question was in fact committed by someone (though not necessarily by the person arrested). The latter limitation does not apply to peace officers. See *Samuel* v. *Payne* (1780) 1 Doug. 359; *Beckwith* v. *Philby* (1827) 6 B. & C. 635; *Walters* v. *W. H. Smith & Son* [1914] 1 K.B. 595; *Christie* v. *Leachinsky* [1947] A.C. 573 at 596-7; Hale, P.C. i 490, ii 79-80, 85, 86, 91-3; East, P.C. i 301.

This restriction, however unfortunate, is clearly settled in respect of the civil liability of the private arrester: that is to say, it is clearly relevant to his liability in tort for unlawful arrest. Writers like Hale assume that it is equally relevant if he is prosecuted for the crime of false imprisonment or assault; but this is against principle. The crimes of false imprisonment and assault require *mens rea*. A private person has power to arrest an actual felon; if, then, he arrests a person whom he believes to be a felon, he should be regarded as lacking the *mens rea* requisite for crime, and this even though no felony has been committed by anybody. Even the tort rule works unsatisfactorily, and may be characterised as a snare for the citizen who tries to effect an arrest.

Those who aid a constable upon his summons receive the same protection as the constable himself (Hale, P.C. ii 86); and the same applies to those who aid without request (Foster, *Crown Law* 309). Thus if a criminal kills a private person who is aiding a constable to effect his arrest, it is murder (*Porter* (1873) 12 Cox 444); and the citizen receives this protection of the law not only in the act of arrest but *eundo, morando et redeundo* (*Phelps* (1841) C. & M. 180; *cf.* East, P.C. i 296). (It would equally be murder to kill a private citizen lawfully arresting on his own account.)

It seems that those who assist even a private person are given his protection. This was so, at least, with the hue and cry, for it was not necessary that the person making an arrest on hue and cry should have been the one who had ocular proof of the act, or who raised the hue and cry (East, P.C. i 298; *cf. Jackson* (1674) Hale, P.C. i 464).

Arrest for attempted felony

Does the power to arrest for felony extend to arrest for attempted felony?

An officer (or private person) can certainly interfere to prevent a felony, and if necessary to prevent it he may arrest the culprit and take him before a magistrate in the usual way. The authority is *Handcock* v. *Baker* (1800) 2 B. & P. 260. Hearing a woman cry for help in a house, the defendants broke open the door (after fruitless knocking) and laid hands on the plaintiff, the woman's husband, to prevent him from killing her. The defendants proposed to take the plaintiff before a magistrate, and allowed him to go into his bedroom to put his clothes on; instead of which the plaintiff got into bed. The defendants, after requesting him to get out, and having no reasonable ground for presuming that he had changed his purpose towards his wife, entered his bedroom, on which the plaintiff assaulted them. They overpowered him and took him along the streets to a constable. It was held by the Court of Common Pleas that the defendants were justified. There was evident danger that the felony of murder might be perpetrated unless the plaintiff were arrested.

It will be observed that this case does not in itself go the whole way of authorising arrest for attempted felony, for it leaves open the question whether there may be an arrest for such an attempt after the danger is over. Suppose a man is found attempting to steal a motor-car. When the attempt is detected, it is unlikely that the offender will persist in it; he will be glad to beat a retreat. Thus arrest is not in this instance strictly necessary to prevent the commission of the crime. The question is whether the arrest is nevertheless lawful.

The books say that arrest for attempted felony is lawful (*e.g.*, Russell on *Crime*, 10th ed., p. 505), but there is no modern authority for a proposition of this width. In *Hunt* (1825) 1 Mood. 93, it was held that a person could arrest without warrant for attempted housebreaking in the night, but here the judge emphasised that the attempt to commit the felony took place in the night. The decision in *Howarth* (1828) 1 Mood. 207 seems to have depended on the Vagrancy Act. There is, however, one case supporting the wide rule, though we have to go back to the medieval Year Books for it. In Y.B. (1469) T.9 E.4 26b, pl. 35 (Bro.Ab. Trespas 184), the defendant to an action for assault pleaded that the plaintiff was a highway robber who held up a woman and demanded her purse; she raised hue and cry, and the defendant, hearing it, arrested the plaintiff and took him to a neighbouring vill where he delivered him to a constable. On behalf of the plaintiff it was argued that the arrest was unlawful because no felonious act had actually been committed. All the judges, however, held the justification good. Nedham J. said: "One who intends to do a felonious act can be arrested and put in jail." The case shows that even a private person can arrest for attempted felony although no actual felony has been committed by anyone, and although the arrest is not necessary to frustrate the felony. American authorities also extend the power to arrest to attempts (Perkins in (1940) 25 Iowa L.Rev. at 230).

The "Truth Drug"

By H. B. WALTON, *Barrister-at-Law*, and C. DOHERTY

R. v. Barker

The administration of "a sort of truth drug" (oxygen and carbon-dioxide) for the first time in a murder investigation in this country (see the letter on p. 482) drew public attention to the Wembley multi-stabbing case in which Raymond Harold Barker, aged 35, an operator, of Kenton, killed his mistress by stabbing her sixty times with a vegetable knife.

Outline of case

Barker was charged at the Central Criminal Court on February 26, 1954, with the murder of Mrs. Beatrice Elizabeth James, aged 44, of 20, Second Avenue, Wembley, and he pleaded Not Guilty.

Mr. Mervyn Griffith-Jones, counsel for the Crown, told the jury that Mrs. James lived with her husband, whom she had married in 1947. In June, 1953, she became acquainted with the defendant, a single man. A love affair started, unknown at first to Mr. James, and on September 26 Barker and Mrs. James went off together to Lincolnshire. Returning to London they stayed at a hotel for several nights until October 12. The defendant then ran out of money and went to visit friends to borrow money to pay the hotel bill. Mrs. James, thinking that he had deserted her, got in touch with her husband who took her home. Husband and wife then resumed life together at their house in Wembley, but in spite of that Mrs. James and Barker continued to see each other. They would meet secretly in public houses and sometimes at the defendant's rooms in Kenton.

On December 12 he bought a vegetable knife with a 5-inch blade from a shop at Wembley. On the following Monday—the day before Mrs. James met her death—Barker was aimlessly walking at Wealdstone at about 10.20 p.m. when a police-constable stopped and searched him. Asked why he was carrying a vegetable knife the defendant said that he bought it as he did his own cooking and needed it for peeling potatoes. At the police station he said to a detective-sergeant: "I think I should apologise to you for causing all this trouble. I have had too much to drink to-night. My mother died on Saturday and I am going to the funeral at Louth on Wednesday. On top of that I have had a row with my girl-friend." The detective asked whether the girl-friend lived locally and he replied "Yes, at North Wembley. I had been drinking with her earlier to-night but we fell out."

Barker then made this significant remark, counsel went on, "I am fed up with women, they aren't worth a light." As Barker appeared to be up to no mischief, he was released.

Next day, said counsel, Mr. James went to work at about 8.15 a.m. and he estimated that his wife must have had some £20 in her possession at the time. Later that morning the defendant and Mrs. James went into a public house near to Second Avenue, Wembley. They remained there until 2.30 p.m. which was closing time, and Barker probably had four or five pints of bitter. He was a fairly heavy drinker and that apparently was quite a normal quantity of beer for him to drink.

After leaving the public house the defendant and Mrs. James stood talking together near a telephone kiosk, and according to witnesses he appeared to be perfectly sober. A few minutes later Barker followed her into her home.

Shortly afterwards—at about 3.20 p.m.—neighbours heard a banging which they had described as the noise of doors being slammed. Then there was silence. Mrs. James was never seen alive again.

At 3.55 p.m. the landlord, a Mr. Phillips, returned. In the hallway he found Mrs. James dead, and the police were informed. Blood was everywhere. Mrs. James was lying on her back. She had underneath her shoulders a cushion, and the doormat had, apparently, been folded double as though to provide some kind of pillow. By her side was a jug practically full of water. It was as though some trouble had been taken to make her comfortable, said counsel.

The telephone was lying broken on the floor. It was covered in blood and there were some hairs attached to it. The drawer of the telephone handset was underneath her body, and her coat was spattered with blood. Her handbag was on the little glove-stand in the hall, but there was no money in it. A ration book, and some pieces of paper which were in the bag, were bloodstained. In the kitchen blood was spattered almost everywhere. Inside the glove-stand was the vegetable knife which the defendant had bought two or three days before, but now it was bent and blood-stained.

A post-mortem examination was carried out on the body of Mrs. James and the pathologist found that the woman had been stabbed again and again. Altogether there were sixty stab wounds, twenty-four in the back and the remainder on the breast, stomach, arms and head. In addition to that there were injuries to the head consistent with having been caused by the broken telephone. The cause of death was haemorrhage from the various stab wounds. Eleven stabs had pierced the right chest and four had gone deep enough to reach the kidney and the liver.

Two days later, on December 17, Barker was arrested. He was found sleeping on the top floor of a bombed-out and derelict building. Told he was wanted for questioning in connection with the murder at Wembley he replied, "I suppose I am." In his possession were found Mrs. James's purse, her wallet, and a photograph of himself which Mrs. James carried in her handbag.

On the way to the police station he said "I am in a mess. I loved her; it is a long story, if you will listen. I might as well tell you about it, it is the best way; I have had nothing to eat since." The defendant was in a filthy condition at the time, and he was ravenously hungry.

In a statement he made later he said "Yes, I did it, I think it is best to tell you." He then described his love affair with Mrs. James. Dealing with December 15, he said that he met Mrs. James at 11.30 a.m. and they went on drinking in the public house until 2.30 p.m. As it was too foggy to go back to his lodgings they agreed to go to her home where he had been about five times before. She said it was quite safe as the old chap was out. Mrs. James then told him they would have to go away together again, but he replied that they would have to wait a little while as he had spent too much money. She then said "Don't you think I am good enough to spend money on?" He told her not to be silly and they kissed, but she again asked him to take her away and he repeated that it was impossible at the time.

According to the defendant Mrs. James then put her purse in his pocket and while they were kissing said, "We are going away together today." When he again told her it was impossible she said, "So you don't love me any more. I came away with you before and I am going again." Barker said he insisted that it was impossible and Mrs. James replied, "I will get myself a new man."

"This time things were in reverse" the defendant went on in his statement, "and it was my turn to plead with her as I still loved her. Whether or not I shall never know if we had an argument but she hit me, not hard, and I felt a bit dizzy at the time. Then came the final word again about this new man. . . . I saw red. I picked up the knife and struck her several times. I realised afterwards what I had done and that I had lost somebody I loved. I dropped the knife and the telephone became entangled, and I hit her with that on the head. I mean to say that it was after I had stabbed her and hit her on the head with the telephone that I realised that I had lost somebody I loved.

"She had asked me to get the knife for her vegetables and I bought it on Saturday or Monday from an ironmonger's in Preston Hill. I had it with me when I went into the house with her. I didn't realise until after, that while I was stabbing her I had cut my hands, they were covered in blood. I went to the sink and swilled them and wiped them on something that was lying about. I then left the house. I still could not realise what had happened. I caught a train from Preston Road station to Baker Street, my head was splitting. I decided to go and have a drink.

"The next afternoon I realised I still had her purse and wallet in my pocket and there they remained. Whether or not I used any of the money I cannot say."

Mr. Griffith-Jones said that the explanation which the defendant had given about the money being put in his pocket by Mrs. James did not appear to be consistent with the evidence. The bloodstains on the ration book and papers in the handbag indicated that it had been opened by someone with bloodstained hands.

On being shown the knife Barker said "That's the knife I did it with. I left it in the house when I went away. It is the one I had when the police-constable stopped me on Monday night."

Mr. Robert Hughes, defending, said the case for the defence was that Barker was insane at the time he stabbed Mrs. James, and that his insanity was hereditary and due to alcoholism. The defendant's grandmother was an alcoholic and spent nearly forty years in a lunatic asylum. A great-uncle was an imbecile and died at the age of twenty-one.

Drinking bouts

Dr. Arthur Spencer Patterson, a psychiatrist, giving evidence for the defence, said that on February 22 he had a two hours' interview with the accused man. " I think the drinking bouts of his grandfather are material in considering this case " said the doctor. " Barker told me that for ten years he had been an intermittent heavy drinker himself and recently there had been a falling off in his ability to work. He also referred to a fainting attack and that seemed to indicate a mental instability. He said he was often drinking twelve pints of beer a day with about five double gins as well, and was unable to remember, the following morning, the events of the night before. Although drinking excessively he was eating almost nothing."

The doctor said that on the evening of December 15 (the day Mrs. James was killed) Barker went to Knightsbridge. He told the witness that in a public house he had a sudden vision of the woman quite clearly. He had a feeling that she was dead, but he had no idea that he was responsible for her death. He said she was smiling as if she was happy.

Dr. Patterson, continuing, told the court that he carried out a physical examination, but there were no signs of alcoholism, the liver was not enlarged and there was no marked tremor.

Mr. Hughes: Are you able to express an opinion of this man's state of mind at the time of this attack?

Dr. Patterson: I have had personal experience of individuals who have shown signs of insanity only when they have been drinking heavily. I have consulted the authority on this subject, the late Sir Norwood East's book, *Forensic Psychiatry*. He refers to mania from drinking as one of the most common conditions associated with crime. Drunkenness may be an expression of insanity, says the author. Further the first indications of manic depressive insanity and other types of insanity may come under observation on account of an act during intoxication. In my opinion madness due to drink is a disease of the mind.

" It was possible," said Dr. Patterson, " to have such a disease of the mind without insanity in the family. The symptoms were that the individual, quite suddenly, would begin to act in a way which was automatic, and therefore he would not be considered responsible for his actions."

Continuing his evidence, Dr. Patterson said that in his opinion Barker had genuinely tried to remember exactly what had happened at the time he stabbed Mrs. James, but the last thing he could recollect was the woman striking him. "I consider a man in his state would be out of touch with reality. The fact that he left a jug of water by the woman and rested her head on a sort of pillow shows that he did not realise she was dead. He was living in a dream world where he still thought she was alive. He was weeping because he thought his mother was dead, although she was not. In acute alcoholism of this kind there is the danger that a man may develop delirium tremens. And in one case in three there is an epileptic fit. Instead of having this fit it is possible to have this attack of homicidal mania when a person is unable to know what he is doing."

Dr. Patterson said that the facts in the present case seemed to fit in with the last explanation. "I think the slap on the face was enough to precipitate this attack, a furore of insane rage. Equally the references to 'a new man' by Mrs. James could have precipitated this attack. I believe he would have no control over the measure of his anger. I think if he had had control he would have stabbed her in some vital part such as the heart."

There were three possible explanations, the doctor went on: (1) that Barker was in a state of automatism; (2) that he had a sadistic attack; or (3) that he was quite sane and wanted to kill her. If he had merely wanted to kill, he would probably have aimed at a vital part. The probable explanation was that he was in a state of automatism. He did not know what he was doing because although he stabbed the woman sixty times, only three wounds were in vital places.

Bearing in mind the evidence of alcoholism and the defendant's heredity, Dr. Patterson said that it was most likely that Barker was suffering from mania à potu (acute mania associated with alcoholic poisoning). "I believe he did not know the nature and quality of his act, and if he did know, then he did not know it was wrong," added the witness.

Cross-examined by Mr. Griffith-Jones, Dr. Patterson said the evidence that the defendant was an alcoholic was based largely on what Barker had told him.

Mr. Griffith-Jones: There is no conceivable evidence of a fit of epilepsy?—No, except that a man who is in a state of acute alcoholism may have a fit at any moment.

There is no evidence of sexual perversion?—No.

Answering further questions Dr. Patterson said that according to the authorities it was possible for a man to be insane only so long as he was suffering from acute alcoholism. Asked if he had based his findings on what the accused man had told him, and that without question, Dr. Patterson replied, "He would be extremely clever and sly to be able to think of the symptoms which he related to me, such as having a vision or visual hallucination of the victim, and saying that at the time he did not know he had killed her."

Throughout the defendant's interview with Dr. Matheson (the prison medical officer) and the police do you know he never said a word about this visual hallucination?—No.

Dr. Patterson added that the most likely explanation was that the defendant was in an insane state when he killed the woman, and did not know what he was doing. He had had a number of patients who had been insane when they were drinking and absolutely sane when not drinking, and he believed that Barker was one of those cases.

Memory of the crime

Dr. Rossiter Lewis, consultant psychiatrist, formerly a medical officer in the prison service, was the next witness for the defence. He said that he had interviewed Barker on three occasions. His memory was that the woman struck him twice with the back of her hand. Barker told him that before that they had gone upstairs for sexual intercourse. He said that since he first met the woman in June sexual intercourse had occurred seldom less than twice a day and frequently five times a day. The witness asked him what had happened after the attack, and Barker told him that the next thing he remembered clearly was being at Baker Street. He had gone into a public house there and had had some drink, and then had gone to Hyde Park Corner. He was very depressed but could not understand why. He walked by the Serpentine and was intending to commit suicide by drowning but did not do so because he reasoned with himself that he was a good swimmer and the attempt was likely to be unsuccessful. He decided to try to get killed by being run down by traffic near Hyde Park Corner. He remembered standing in the middle of the road and cars pulling up sharply all round him. He was not struck by a car. He gave up this suicide attempt and continued walking about without food. Two days later, for the first time, he thought he could sleep, and he went into a bombed derelict house, where on the second night he fell asleep. He also told the witness that he was a fairly heavy drinker and during this particular week he had had a lot to drink.

Continuing, Dr. Lewis said that Barker told him that on the morning of December 15 he had a pint of beer and a whisky, and later four or five pints of bitter, three double whiskies and a Dubonnet, and that he remained drinking in a public house until 2.30 p.m.

"He told me," continued the witness, "that his mind was a complete blank about the crime until he found himself on familiar ground at Baker Street. Everything seemed hazy. He said that at that time he had no idea he had committed a crime and was completely fogged. It was not until he reached the police station and was told about the murder that his memory returned to some extent. He recollected having an argument with the woman and he dimly remembered taking up something and going forward with it towards Mrs. James."

Dr. Lewis said in his opinion there was a definite memory loss or gap. The defendant described how he was sitting at a table in a public house at Knightsbridge when he had a vision, the vision of Mrs. James, and she seemed to stand by a chair and then to disappear. Barker told the witness "I knew I wasn't going to see her again, but I did not realise then I had killed her." He had no visions after that.

There were several possibilities to account for this loss of memory, said Dr. Lewis: (1) that he was deliberately suppressing knowledge of the crime; (2) that it was a hereditary reaction due to extreme emotion at the time; (3) that his loss of memory was simply due to alcoholic intoxication; or (4) that his loss of memory was due to insanity and that there had been derangement of the normal working of the mind at the time so that the events which took place were not properly registered and therefore could not be perfectly recalled.

Dr. Lewis said he first decided to try to restore the defendant's memory by questioning. "If the loss were due to heredity I should have expected the memory to be readily restored; if due to insanity I should not have expected the memory to be restored," the doctor explained.

The "truth drug"

On February 21, said Dr. Lewis, with the medical officer at Brixton Prison, who took notes of what was going on, he gave the defendant a form of anaesthetic which was a combination of two gases, oxygen and carbon dioxide, the proportion of the latter being 30 per cent., which was a high proportion.

"In common with most psychiatrists I have had a great deal of experience of giving this anaesthetic, which is a recognised technique, and its object is to create what is known as an ab-reaction, that is a re-living of a repressed incident, as a result of stimulation by means of this gas," said Dr. Lewis. The gas was administered in two parts, first slightly, and secondly more deeply, bordering on actual unconsciousness. "In neither was I able to restore the memory of the actual stabbing, or what had been done immediately after the stabbing," said Dr. Lewis. "It was not possible to do so. My conclusion from this was that his mind was deranged at the time and that the memory was non-existent in detailed form. Based on that I came to the conclusion that at the time this offence was committed he was suffering from a form of insanity. It is a conclusion with which other psychiatrists might not agree, but I have had experience in similar cases and I base my opinion upon my personal experience."

Replying to Mr. Hughes, Dr. Lewis said that the test could have been carried out by an injection as distinct from the administration of gas. He decided not to give an injection because with injection there was a risk of damage to the liver in a person who was suspected of being a heavy drinker. "Secondly I felt that the oxy-carbonic test was likely to give a better reaction and a truer result."

Mr. Hughes: You got no assistance at all from him under the test?—I got every co-operation from him, but he was unable to give any details to me under this test. Before the test he expressed his willingness to co-operate in every possible way. I took the view that this was essentially a case of manic depressive insanity, which is a disease generally brought about by the effect of alcohol upon the brain. He appears to be normal now, but under the influence of drink he would readily become abnormal again at any time. I have had previous cases where drink has exposed an underlying insanity.

Encephalograph Test

Dr. J. C. M. Matheson, senior medical officer at Brixton Prison, called by the prosecution, said in the witness box that the defendant was admitted to the prison hospital on December 18 and had been under observation since then. He had been interviewed on a number of occasions and blood tests and an encephalograph test were carried out. The object was to find out if at the time of the test the brain was working normally. "The defendant gave me a rational and coherent account of his life and described facts relating to the killing of the woman. He never made any mention of his having seen a vision of the woman the evening after the killing. Neither did he mention having tried to commit suicide," said the witness. "There was nothing abnormal about the accused and no signs of recent heavy drinking." Dr. Matheson said Barker was of average intelligence and he found no signs of mental abnormality.

Mr. Griffith-Jones: In your view was the loss of memory genuine?—I think it may have been.

Was this man, in the legal definition, sane at the time he killed this woman?—I think he was.

Must he have known what he was doing?—I think so.

It has been suggested that this man was suffering from mania à potu?—I do not think he was. I have never had one actually in my charge, but from my reading and the experience of other doctors this case does not resemble that.

Dr. Lewis has given a diagnosis that he was suffering from manic depressive insanity which showed itself as a result of alcohol.—No, I do not think he was suffering at any time from that.

Mr. Hughes, cross-examining: You are not suggesting he invented the vision of the woman?—It is a difficult thing to say.

It is a well known medical symptom?—Hallucination, yes.

Continuing his evidence Dr. Matheson described the tests carried out by Dr. Lewis on the defendant after he had been given an anaesthetic of oxygen and carbon-dioxide. Dr. Matheson said that this test was carried out with the permission of the Home Office. The only condition laid down by the Prison Commissioners was that nothing should be done to incapacitate Barker when he came up for trial. The doctor added that as far as he knew this was the first time such a test had been carried out on someone facing a capital charge.

Mr. Hughes: I do not want to sound melodramatic, but it has been described as "a sort of truth-drug?"—Yes.

Answering Mr. Griffith-Jones, for the prosecution, Dr. Matheson said that he formed the impression that throughout Dr. Lewis's interview with the defendant while he was under the anaesthetic, Barker was deliberately holding back information. The witness came to this conclusion from the tone of his voice and the way he responded.

Dr. Desmond Curran, senior psychiatrist at St. George's Hospital, and civil consultant in psychological medicine to the Royal Navy, was then called as a witness for the prosecution to give evidence in further rebuttal of the evidence of Dr. Patterson and Dr. Lewis.

Dr. Curran said that Barker had told him during an interview that on December 15 (the day of the killing) he drank $1\frac{1}{2}$ pints of mild beer, eight bitters, three or four gins, some whisky and wine between 11 a.m. and 2.30 p.m. He had described himself as not drunk and not entirely sober. "In neither interview I had with him did he display any evidence of insanity, mental disease or abnormality," said the doctor. "I was able to find nothing to indicate that he was suffering from a disease of the mind at the time he killed the woman."

The summing up

Summing up Mr. Justice Cassels put the following questions to the jury: "If he did not know what he had done why was he hiding in a bombed-out house? Why did he say to the policeman who woke him up and told him he was wanted for interview in connection with a murder at Wembley, 'I suppose I am'? What was he doing with the deceased woman's wallet and purse? Why had he got rid of his overcoat and bought a new raincoat? You must consider the statement he made to the police. If his memory is so bad how does he remember so much about his movements before and after the killing? And so much about what he had to drink? Why did he turn back to 20, Second Avenue on that fatal afternoon after the deceased woman had gone into her home alone? What was the effect upon him of the deceased woman's telling him that she would have to get another man? Was he a man of a jealous disposition; was he an angered and jealous man? Did he know he had killed the woman when he left? He said 'After I had stabbed her and hit her on the head with the telephone I realised I had lost somebody I loved.'

"What is your conclusion?" the judge asked. "Is it murder during insanity? If so you will return the special verdict of Guilty but Insane. Was he so drunk that he was incapable of forming in his mind an intent to kill? If so you will return a verdict of Guilty of Manslaughter. Or was it just plain murder?"

The jury then retired. After considering their verdict for two hours and fifteen minutes they returned into court to ask this question: "Is it necessary for the defence to prove beyond doubt that the accused was insane at the time?"

The judge told them in reply: "The burden is upon the defence to prove insanity at the time the offence was committed. But while so far as the prosecution is concerned the burden of proof of guilt is a high one, it is not so high in the case where the defence is called upon to prove something, and it is enough if the defence satisfies a jury that what they have to establish might probably be true. In other words, if they can establish to your satisfaction that this man was probably insane, the defence has discharged the burden which rests upon them."

After considering their verdict for three and a half hours the jury found Barker Guilty but Insane.

Trusting the Jury

By J. E. HALL WILLIAMS, LL.M., *Barrister-at-Law*

In view of the important part played by the jury in English trials, particularly in criminal cases, one would expect there to be a considerable volume of literature about juries, but it appears that, apart from Dr. R. M Jackson's scholarly articles[1] and the stimulating discussion in his book *The Machinery of Justice in England*,[2] very little has been written about this subject in recent times. It may be of interest therefore to consider what contribution to the discussion is made by the report of the Royal Commission on Capital Punishment, which was published in September, 1953 (Cmd. 8932).[3]

The report shows that the members of the Commission had complete confidence in the jury system in criminal cases, and considered that the solution to nearly all the major problems with which they were faced lay in trusting the jury, which in their view could be relied upon to act responsibly and to bring in sensible verdicts in cases involving capital charges. It is submitted that this faith in the jury system represents an inarticulate major premise in the Commission's report; it is something which underlies most of the important recommendations, and this is a feature of the report which may not have been sufficiently appreciated hitherto by those who have been studying the Commission's proposals.

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[1] "Jury Trial Today" (1938) 6 Camb.L.J., pp. 367–80; "The Incidence of Jury Trial During the Past Century" (1937) 1 M.L.R., pp. 132–44.

[2] Second Edition, 1953, pp. 63–8 and 236–50.

[3] This report was reviewed by the present writer in (1954) 17 M.L.R. 57–65.

It is obvious that the Commission's most controversial proposal, that the jury be given discretion in murder trials to decide whether there are any extenuating circumstances which make it inappropriate to impose the capital penalty, involves placing reliance on the jury, and this proposal is of such great importance that it merits separate discussion.[4] The same confidence in the jury which led the Commission to adopt this proposal also inspires their conclusions in three other important respects: (1) in relation to constructive murder; (2) in relation to the scope of the law of provocation; (3) in relation to the McNaghten Rules. These will now be considered individually.

Constructive murder

In relation to the doctrine of constructive murder, which it is proposed should be abolished, it is said that, if the doctrine were abolished, the Commission are confident that

> "English juries can be trusted to discharge their responsibilities with fairness to the accused, but also with firmness and proper regard to the protection of the community. . . . They will not shrink from a verdict of murder where there is clear evidence that the accused intentionally or recklessly endangered life, and they will not be slow to find that he had the necessary intent or knowledge where that inference can properly be drawn." (§ 109, p. 40.)

Provocation

In relation to the scope of the law of provocation, which it is proposed should be extended to cover mere words alone, the Commission consider that the question whether words alone amount to sufficient provocation can safely be left to the jury.

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[4] A defence of the Commission's proposals to institute a system of jury discretion in murder trials is to be published in the present writer's article, "Jury Discretion in Murder Trials," 17 M.L.R., July, 1954.

> "We do not share the fear of some witnesses that if juries were given so wide a discretion they would be too lenient. We fully recognise that words alone will seldom constitute adequate provocation to a reasonable man, but we agree with those witnesses who considered that the question whether such provocation was given is essentially one for the determination of the jury. We think that if the issue is left to the jury and they are allowed to consider each case on its merits, irrespective of whether the alleged provocation was by word or deed, they can be trusted to arrive at a just and reasonable decision and will not hesitate to convict the accused of murder where he has acted on only slight provocation, whether by words or otherwise." (§ 151, p. 56.)

Even when the Commission's conclusion is not to recommend any change, as in relation to the present objective standard of the reasonable man's reactions to the provocation, the justification given for this decision is that, in practice, courts (which in this context must mean juries, with or without the approval of the judge) "not infrequently give weight to factors personal to the prisoner in considering a plea of provocation." (§ 145, p. 53.) In other words, juries can be relied upon not to allow this rather artificial reasonable-man test to cause any injustice.

Insanity

In relation to the McNaghten Rules, which furnish the test of insanity as a defence in criminal law, the Commission received a great deal of evidence to the effect that no change was necessary because "the McNaghten Rules leave the jury untrammelled to use their common sense," and that "juries could be relied on to return common-sense verdicts." (§§ 233, 234, p. 82.) Nevertheless, despite these weighty expressions of opinion, the majority of the Commission recommend that the Rules should be abrogated entirely, so that "the jury would be left free to decide, in the light of all the evidence given in each particular case, the question of insanity." (§ 327, p. 114.)

The objection most strongly urged against this course was that it would place upon the jury a difficult if not impossible task by requiring them to decide a purely medical issue beyond their capacity. This was countered by the majority in this way :

> “We think that this objection is put too high: that it rests on a misapprehension about the nature of the issue and on too low an estimate of the capacity and common sense of juries, which in other contexts were highly praised by many witnesses.” (*ibid.*, p. 115.)

The Commission are fully aware that in capital cases pleas of insanity are often advanced on insufficient grounds, but believe that the strongest protection against such pleas lies in the common sense of juries, and that “one of the advantages claimed for dispensing with a definition . . . is that it would lessen any risk of jurors thinking that they have not to use their own judgment on this question.” (§ 331, p. 116.)

Jury discretion

To complete the picture of confidence in the jury which these quotations from the report supply, a few quotations from the Commission’s discussion of the jury discretion proposal may be permitted. In defence of this proposal, it is said that

> “it may well be argued that the men and women of the jury may be regarded as a microcosm of the community, who will reflect the changing attitudes of society as a whole to the infliction of capital punishment, and that there could therefore be no more appropriate body to decide whether the fellow-citizen whom they have found guilty of murder should suffer the penalty of death prescribed by the law or should receive a lesser punishment.” (§ 571, p. 200.)

Dismissing the suggestion that discretion should be vested in the judge on the ground that it would place upon him too grave and invidious a responsibility, the Commission say that

> “it is more in accord with the instinct of our people to entrust to the men and women of the jury a joint responsibility for decisions which will affect the life of the accused.” (§ 549, p. 193.)

In answer to the contention that a system of jury discretion would lead to excessive leniency, the Commission assert that they do not believe the system would in practice work in such a way as to suspend or abolish capital punishment, and they go on to say:

> “We have been struck by the almost unanimous tributes paid by the judges and other experienced witnesses to the reliability and common sense of British juries,

> and we believe that the qualities they have always displayed in dealing with the issue of guilt or innocence would also be brought to bear if they were required to exercise a discretion with regard to the sentence." (§ 577, p. 202.)

The future of the jury

The conclusion is surely irresistible that the Royal Commission on Capital Punishment has given the jury in cases involving capital charges an overwhelming vote of confidence. This is similar to, and no doubt as debatable as, the vote of confidence which was extended to the system of lay magistrates by the Royal Commission on Justices of the Peace in 1948 (Cmd. 7463, July, 1948). Now when advocates and judges, in speaking or writing about their experience in the practice of the law, extol the virtues of the jury system, it is wise to treat such expressions of admiration with a certain amount of reserve, for rarely do those same persons adhere to these expressions of opinion in their more candid private conversations.[5] But when a Royal Commission, after prolonged investigation and careful deliberation, comes out with similar observations and conclusions, they are surely entitled to more respect.

Whatever may be the fate of the jury in civil causes, and there is reason to believe that it is disappearing as an institution of the civil courts,[6] it is clear that the day is far distant when the use of the jury will suffer a decline in criminal cases. It has been said by an American writer that " while there are weaknesses in trial by jury, few thoughtful students would recommend its abolition in criminal cases." [7] Support for the jury as an institution of the criminal courts was expressed by the Wickersham Commission in the United States in 1931, which felt strongly "that the jury is on the whole an eminently suitable tribunal for criminal cases."[8] Dr. Mannheim, in his survey of the use of the jury on the Continent of Europe in criminal cases, observed that "it is impossible to imagine that, some day or other, this institution will be abolished in England."[9]

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[5] This point is well made by the American writer Jerome Frank, in his book *Courts on Trial*, 1949, at p. 138: " Trial lawyers, in public addresses, often extol the jury system. But many of those same lawyers, in private conversation, wax cynical about it." The same author, in his *Law and the Modern Mind*, 1930, says much the same thing about the attitude of judges towards the jury system, at p. 180: " The truth is that the very judges who seem to estimate the jury as superior triers of the facts pragmatically reveal little sincerity in their jury worship."

[6] See Dr. Jackson's observations in his book at pp. 64–5. See also Professor C. J. Hamson's broadcast talk on " The Characteristics of an English Trial," reprinted with others under the title " The English Trial and Comparative Law," 1952. He says at p. 15 that " a jury in England today actually appears in an infinitesimal proportion only of the civil cases heard and determined."

[7] Professor L. B. Orfield, *Criminal Procedure From Arrest to Appeal*, 1947, pp. 411–12.

The recommendations of the Commission are felt in some quarters to be too far-reaching,[10] and it is feared that they might damage the institution in which they repose such faith.[11] But it is submitted that, if they are implemented, they will in fact enhance the importance of the jury in capital cases, and the prestige of the jury generally. It is only natural that, as society advances, it should place increasing faith in the jury, and should recognise that, whatever may have been the position in the past, here is a body of men and women admirably suited to decide the fate of fellow citizens, and capable with proper guidance of reaching sensible decisions. It is for recognising and accepting this so whole-heartedly that the report of the Royal Commission on Capital Punishment is most noteworthy. Let those who are disposed to attack these courageous proposals pause to reflect, and perhaps they will realise that here, in these proposals, lies the possibility not only of maintaining the jury's position in criminal trials, but of enhancing its position and prestige in the legal universe.

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[8] National Commission on Law Observance and Enforcement, *Report on Criminal Procedure*, p. 28.

[9] Dr. Hermann Mannheim, "Trial by Jury in Modern Continental Criminal Law" (1937) 53 L.Q.R. 99 and 388, at p. 101.

[10] The majority of the speakers in the House of Lords debate on the jury discretion proposal expressed opposition to it, see 185 H.L. Debates, 137–88, December 16, 1953.

[11] Viscount Samuel appears to have feared that this would be the result if the jury discretion proposal were adopted; see his speech in the debate, *loc. cit.*, cols. 181 *et seq.*

International Criminology

By Jean Graham Hall, LL.M., *Barrister-at-Law*

The latter half of the fourth International Course was mainly devoted to describing recent criminological researches in this country, offered in the spirit of providing the practical worker with facts.

Prediction Tables

The possibilities of prediction tables, preferably termed experience tables, were explained by Dr. Hermann Mannheim, Reader in Criminology at the University of London, and Mr. Leslie T. Wilkins, Senior Research Officer of the Government Social Survey. The lecturers claimed that, through the use of these tables, much valuable advice can be offered to those passing sentences regarding the likelihood of success in a particular case.

This is the first project of its kind in our country, although Sheldon and Eleanor Glueck in America tackled a closely analogous problem over a period of many years.

Dr. Mannheim and Mr. Wilkins took as data factors in the histories of intakes of Borstal boys and gave these certain specific weightings. The factors were previous convictions, work record, type of home and family life. Using the constructed tables, they predicted the subsequent success pattern of these boys. For one intake they were accurate within half per cent.

The method consists of accumulating a body of experience and subsequently sorting this out with regard to the individual under consideration. Admittedly constantly exact prediction is impossible. Experience tables are merely carefully calculated probability statements offered as indications rather than decisive proof. With the more scientific prognosis, cautious guidance could be derived by the courts from the discriminate use of these tables.

Borstal Boys

Speaking of typological research on adolescent offenders, Dr. D. A. Ogden, Medical Officer of H.M. Borstal Institution, Portland, Dorset, gave details of another research recently carried out on Borstal boys. The criterion in this survey was the reaction of each boy to the circumstances of his training, assessed by all members of the staff.

Group A included inmates with mental or physical abnormalities sufficient to colour any attitude to Borstal.

Group B consisted of ten classifications, including adolescent types, those who were predominantly emotionally unstable, submissive, shiftless, ego-centric or aggressive. 250 names from the house lists of a specified closed institution were taken, together with all available reports.

The survey covered a period of four years, during which time 65 per cent. of the 250 have been re-convicted once since release. 32 per cent. of the total have been convicted more than once. Comparing the classified groups, failure on re-conviction varied tremendously. The submissive type, easy to control in an institution, come within the highest re-conviction rates. Conversely, aggressive types, extremely troublesome while undergoing training, showed good long term prospects.

The hysterical swindlers, explained Dr. Ogden, mirrored the classical picture of the real recividist with extremely bad long term prognosis. Difficulty in classifying a dominant factor omened ill. This was also true when, rarely, a boy harboured a genuine sense of grievance.

The survey demonstrates the need for maximum effort in aftercare. Some types are liable to fail immediately they leave Borstal, the pattern of others following a much longer space of time. Aftercare, suggested Dr. Ogden, should continue even on re-conviction. Many boys failed only once on release, then subsequently went straight. The survey also evinces that specific boys need re-allocation to alternative institutions, while others would benefit from a modified period of training.

Psychiatric Treatment of Prisoners

An account of psychiatric treatment during imprisonment available at Wormwood Scrubs, Wakefield and Holloway was given by Dr. H. K. Snell, Director of the Prison Medical Service.

Dr. Snell emphasised that certain prisoners should not be given psychiatric treatment, *i.e.*, those certifiable under the Lunacy Acts, of low intelligence or with a permanent organic defect, unwilling patients, prisoners unduly resigned or harbouring resentment, and volunteers possessing some ulterior motive. Mere consent of the prisoner to undergo treatment is not enough. Many believe in the magic of medicine and are indifferently willing to submit to an operation. The prisoner must learn to undertake his share of the responsibility in treatment.

Psychiatry has won a due place in prison treatment but we must not overplay the benefits available under such trying conditions. According to Dr. Snell, approximately 150 prisoners per year receive treatment from visiting psychotherapists. Remembering the impracticability of conducting a normal follow-up inquiry, success is difficult to estimate. From Wakefield, of 108 cases released since 1948, only 7 have been re-convicted. Against these figures one must balance the recognition that Wakefield is a star prison with, in any case, a success rate of 80 per cent. to 85 per cent.

Epilepsy in Murderers

Electro-encephalographic studies of offenders were the subject of a dissertation by Dr. Denis Hill of the Department of Clinical Neurophysiology, Institute of Psychiatry, University of London.

By instrument recordings on moving paper the fluctuation in electrical activity on the surface of the brain can be gauged from a number of electrodes attached to the scalp. The E.E.G. data underlines abnormalities by demonstrating a disturbance of brain function.

Dr. Hill commented on the high incidence of epilepsy in murderers. A possible explanation is that epilepsy results from brain damage suffered at birth or early in life, frequently penetrating the deeper lobes of the brain. Dr. Hill reiterated that no E.E.G. character or pattern exists which correlates solely to criminality. This developing science, still admittedly in infancy, can show that unusual E.E.G. recordings are a phenomenon of abnormality, but not of all criminality.

Recognition of Intoxication

By H. E. ARCHER, M.R.C.S., L.R.C.P., F.R.I.C., PH.C.
Chemical Pathologist, St. Bartholomew's Hospital

In the majority of cases recognition of intoxication is related to the possibility of a person being charged under the Road Traffic Act, 1930, with driving or attempting to drive or being in charge of a motor vehicle when under the influence of drink or drugs to such an extent as to be incapable of having proper control of the vehicle. Medical practitioners who have been called upon to give an opinion as to an individual's intoxication or otherwise at the relevant time have in the past relied upon a number of tests varying greatly in their nature and accuracy. In 1951 the British Medical Association therefore appointed a special Committee to " revise and bring up to date the Association's report on the tests of drunkenness (1927) and the relation of alcohol to road accidents (1935)." This Committee was composed of representatives of medicine, the law and industrial science including those with specialist experience in forensic medicine.

Where there has been an accident the opinions of witnesses, both lay and medical, have in the past been largely based on the behaviour of the subject and upon his reaction to various tests mainly involving his mental state and nervous system. Since many individuals are grossly affected by the shock of being involved in an accident, apart from any physical injury, and may be in an emotional state, any method of assessment which is unaffected by such factors must, even if of limited value, be an advance in the better judging of a subject's condition. For this reason and as the present trend in many countries is to test for drunkenness by assessing the concentration of alcohol in the body the Committee was assisted in its deliberation by a panel of experts appointed by the Royal Institute of Chemistry, and their contribution to the final report is a very precise direction as to the method of alcohol assay in blood and urine that should be used when such specimens have been collected in the course of the medical examination.

There is no legal definition of alcohol intoxication but the Committee would define it as a condition produced in a person by a quantity of alcohol sufficient to cause him to lose control of his faculties to such an extent that he is unable safely to execute the occupation on which he is engaged at the material time.

The report of this Committee should prove of great value to all likely to be involved in such cases as it gives, first, a clear account of the procedure the practitioner should adopt when he is called upon by the police to examine a person suspected of drunkenness. The importance of not overlooking the presence of organic disease or the effects of shock are stressed and a comprehensive list of conditions given which may simulate alcoholic intoxication. Included in this list are those drugs used in the treatment of various psychological and allergic disorders, many of which, such as the barbiturates may, if taken too freely, give rise to a mental state rendering a person unfit to drive a vehicle with safety.

Blood tests

As hypoglycaemia, which indicates that a person's blood sugar level is very low, is frequently raised by the defence as an explanation of the confused or even comatose condition of an accused, it would seem that this condition might have been given some emphasis in the report, and some guidance given as to any appropriate tests which might, in the circumstances of the case, be possible. The report gives a model scheme of medical examination which, while only offered as a guide, is certainly a very good one and should be of use to the most experienced clinician. There is a short note on the rendering of certificates and also the giving of evidence in court. The remaining part of the report is devoted to the question of determination of alcohol in body fluids which in this case means blood and urine. There is no doubt that such determinations are of value for they can indicate the minimal amount of alcohol present in the body. In some countries medico-legal authorities agree upon a figure at which level the law makes it an offence for a person to drive a motor vehicle. The figures are quoted in the report. No official figure is laid down for English law, but it seems likely that much more attention will in the future be given by the courts to this aspect of diagnosis. Such attention would seem to be desirable because if the blood alcohol level is low at the relevant time it would exonerate an innocent person when otherwise the evidence, based on the accused's behaviour, although not consciously prejudiced, might act to his disadvantage.

Detailed instructions are given of the procedure to be adopted in the collection and preservation of specimens taken for analysis; these must be taken with the detained person's consent. The descriptions in the report of two selected methods, which are very detailed, are valuable because all competent analysts using one or other of these well tried procedures should arrive at results showing no marked variation.

Driving a motor-vehicle at the speeds common today demands an ever-increasing degree of judgment and rapid reflex response to emergencies. It is well known that alcohol makes for a lowering of both these standards and, although the driver may be a long way from what is commonly regarded as a state of intoxication, he may have a blood alcohol level at which his judgment is impaired to such a degree that he becomes a potential cause of accidents. It would be well if the relationship of alcohol content to the body tissues and its effects were more widely known and could perhaps in condensed form be incorporated in the Highway Code.

Individuals will vary considerably in their reaction to any given quantity of alcohol, for example, the power of the body to burn it into carbon dioxide and water, the presence or absence of food in the stomach prior to alcohol being taken and the nature of the alcoholic drink, whether in the concentrated form of spirits or in the diluted state of beer, are all factors to be considered.

When the concentration of alcohol in the blood reaches the region of 0·15—0·2 per cent it usually results in a less inhibited, talkative and rather noisy person; the reflexes are somewhat slow and there is a minor degree of muscular inco-ordination. In spite of this the subject is probably quite confident and unaware of his diminished skill. As the level rises the muscular control lessens and mental activity becomes more difficult. At levels of 0·4—0·5 per cent. there may be complete loss of muscular activity followed by stupor and coma.

Urine tests

Alcohol, once it is absorbed from the intestinal tract, is rapidly distributed throughout the tissues of the body including the brain and becomes in equilibrium with the concentration in the blood. For this reason any blood alcohol determinations will reveal evidence of the approximate total alcohol present and therefore the approximate minimal amount that could have been ingested. Unlike many other substances the alcohol level in the urine is only slightly higher than that in the blood in the approximate proportion of 4 to 3 and for this reason the Committee recommended the investigation of the urine of the suspect person as being more convenient to obtain than the blood. That this relationship exists and that the urine is therefore quite suitable is true, but the report omits to point out that this relationship is only true of urine being secreted into the bladder, and therefore to get a figure which can be translated into terms of blood alcohol levels it is important to know the period of time over which the urine has been collected in the bladder. For example, to take an extreme case, suppose that a person having taken a large dose of concentrated alcohol on an empty stomach rapidly reached a high blood level, any urine secreted at this level and for some time afterwards would reflect the blood levels over this period. Assuming no great volume of fluid is drunk for some time and therefore no emptying of the bladder he might, at a much later period, drive his car and become involved in an accident. A specimen of urine passed for the purpose of analysis would have an alcohol content reflecting a blood level very largely related to the period when he was not driving or in charge of a car. This should be considered and to exclude this possible error it might be better to recommend that blood be collected at the same time for analysis or steps taken to collect a specimen of urine the secretion period of which is known.

An additional advantage of the blood collection is that it would if necessary yield valuable information as to the blood sugar level, a normal or raised level would indicate that a hypoglycaemic state previous to the blood collection was very unlikely. No doubt these points were considered by the Committee and probably their conclusion was that the procedure should be as simple as possible.

The end of the report states that the Committee have under consideration the relation of alcohol levels to intoxication and will discuss the subject more fully in its next report. As the layman cannot be expected to relate alcohol blood percentage to concentrations of alcohol in various beverages the report indicates the method of calculating the minimum amount of alcohol circulating in the body.

The report also includes tables showing the relationship of the urinary alcohol percentage to the minimal amounts of beers or spirits which must have been taken to produce such a result. All the conclusions are designed to give the most favourable result to the suspect.

The Committee and their advisory panel have obviously given much care and thought to this report and the result is a clear and concise account of their considered opinions which should be an excellent guide in dealing with a very difficult problem.

In a recent television discussion of the subject by members of the Committee and advisory panel it was pointed out that this was only one aspect of the problem of dangerous driving and that because of the extreme variation in the reaction of individuals to different amounts of alcohol, the presence of a raised blood alcohol content did not, in itself, necessarily mean that the subject was unfit to drive.

It would appear that the report's greatest importance from the point of view of an accused person would be that if he is innocent of having taken any appreciable quantity of alcohol the tests will support his contention.[1]

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[1] In a recent case in Canada, *R.* v. *Donald* (1954) 11 W.W.R. (N.S.) 188 (B.C.), evidence of the alcoholic content of an accused's blood, while not conclusive, was held to be corroborative of other evidence as to his condition at the time of the offence. Evidence of the result of a test made with a "Drunkometer" was admitted.

The Defence of Coercion

By J. F. Garner, LL.M.
Clerk of the Peace, Borough of Andover

The defence of duress *per minas*, coercion and/or superior force, is rarely found in our criminal law, but when it is pleaded, it raises interesting questions. It is suggested that there are really three different types of case to be considered, in each of which different considerations may apply to different crimes. To commence with basic principles, however, we must remember that whereas *actus non facit reum nisi mens sit rea*, everyone is presumed, even in the criminal law, to intend the reasonable and probable consequences of his acts. For duress, coercion, etc., to be acceptable as a defence, therefore, it would seem (any special statutory provision apart), that the degree of force must be such as will negative any guilty intention on the part of the accused.

Superior force

Here the accused has perpetrated the crime under the physical compulsion of another. Thus, where A is shooting at the butts, and as his hand is on the trigger aiming at the target, B pulls the rifle round causing it to go off and the bullet to strike C, in such a case, A is clearly not guilty, as he had no guilty intention; B on the contrary will be responsible, for *qui facit per alium facit per se.*

Duress per minas

In this case, the example usually given is that of a man being compelled to execute some crime at the pistol point, and a real and instant threat of death will probably be sufficient to excuse any crime short of treason or murder; *in extremis*, even these crimes may possibly be excused. "It has been thought," says the learned editor of the 16th edition of Kenny's *Outlines of Criminal Law* (at p. 58), "that threats of the immediate infliction of death, or even of grievous bodily harm, will excuse some crimes that have been committed under the influence of such threats. Yet it has been found impossible to say with precision for what crimes the defence will be allowed to avail." It is a matter, it is submitted, of weighing the gravity of the offence charged, against the seriousness of the threats and the circumstances in which they were made. Unpleasant or undesirable consequences to the accused short of serious physical injury would not normally be sufficient, but a threat of serious injury to a third person, such as the accused's wife or child, might be sufficient in some circumstances to be accepted as a defence to some crimes. As is pointed out in Kenny, these questions of criminal responsibility are not always raised in practice where it would be legally possible to do so, as such matters can—and will—always be taken into consideration in mitigation of sentence.

Coercion

This really refers to the special position of a wife. Section 47 of the Criminal Justice Act, 1925, abolishing the common law presumption that any offence committed by a wife in the presence of her husband was committed under his coercion, provides that on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

The question here, of course, is, what is meant by "coercion"? It is clear that if coercion can be proved, it is a sufficient defence, but does this mean something less than the *duress per minas* that would be a sufficient defence for that charge in the case of *any* defendant? Presumably so, or otherwise the substantive part of the section (other than the abolition of the old presumption) would be redundant—and Parliament presumably meant something more than to state the general law as applied to the particular case. If this is so, how serious must the coercion be so as to amount to a defence? There seems to be no reported decision on the point since the passing of the 1925 Act, and the question must therefore, it is submitted, be treated as one of fact for the jury. The judge must explain that "coercion" may amount to a defence, and then leave to the jury the question whether in the particular case, the degree of compulsion existing should be treated as sufficient.

Husband's coercion of wife

In a recent case at quarter sessions, a young married couple were charged with breaking and entering certain premises. It became clear that the couple had run away from their parents' homes without means, and were carrying on a nomadic existence, not having had any food for two days. The husband pleaded guilty to the offence, but the wife pleaded the statutory defence of coercion, it being urged on her behalf that she had begged her husband not to commit the offence, and said she would not accompany him. He, however, said he would leave her if she did not go with him, and she thereupon entered the premises with him and consumed some of the food he stole.

The learned recorder explained to the jury that there was no precise definition of coercion, and directed that, whereas they should not take any notice of any fanciful threats, threats of unpleasant consequences to the accused could in certain circumstances be regarded as coercion. Feeling, no doubt, a very natural sympathy for the accused wife, who was aged only sixteen, the jury returned a verdict of not guilty.

The case obviously does not afford much assistance to the serious student of criminal law, as it was decided on its own special facts, and being one of no very great gravity, much of the sympathy of all concerned was with the accused. It does, however, raise interesting points for speculation, and might lend itself to an entertaining moot at one of the Inns of Court. Must the will be completely overpowered, or does the section of the 1925 Act in substance amount to an exception to the general rules of criminal responsibility? No doubt some of these questions may never be answered, but they may be raised in any trial. Further, an answer related to one particular type of crime will not necessarily apply equally to some other crime of greater or less gravity.[1]

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[1] Since this note was drafted, the writer has read the interesting observations of Professor Glanville Williams in his *Criminal Law*, The General Part, § 188; the learned author suggests that "coercion" may be a synonym for "duress," but agrees that the question remains open.

A Day in a Police Court

By A. E. Jones

Magistrates' Clerk

The series of which this is the sixth instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

A Shop Lifter

"Charge No. 9, Alice Brass, your worship," announced Mure, the assistant gaoler, his custodian hand on her arm ushering her into the dock with a gesture which in other surroundings might have given a vague impression of eighteenth century courtesy.

In reply to a question by Frell, the clerk, the detective constable who came into the witness box agreed that it was a case the prosecution was asking the magistrate to try. Frell turned to the woman and said "You are charged with stealing a pair of stockings, value 3s. 9d., the property of Sixpenny Shops Limited. On that charge you have the right to be tried at another court—the Sessions House—by a jury. But instead of that you can have your case dealt with here by the magistrate if you prefer. If the magistrate tries the case here, however, and convicts you he may, after hearing about your character and past, decide that his powers of punishment are not sufficient and send you to Sessions to be sentenced there. Do you wish to be tried by a jury or do you agree to the magistrate's dealing with the case?"

"I didn't mean to steal them," was the reply.

"Yes, but the first thing," explained the clerk, "is to settle who shall decide that—a jury or the magistrate?"

"I'm afraid I don't understand these things. Which is best for me, sir, please?"

"You must make up your own mind about that. You know what a jury is. You can have the question of whether you stole or not decided by them in about a fortnight's time at another court or you can ask the magistrate to decide the question here today. Which is it to be?"

"Oh, the magistrate, here, today. I want to get it over."

"And do you plead guilty or not guilty?"

"I plead guilty to the stockings being found in my pocket, but not guilty to stealing them intentionally."

"In other words you plead not guilty," said Mr. Sutterthwick, the magistrate. "You're not charged with having stockings in your pocket. It isn't an offence. And you can't steal anything unintentionally."

"The first witness, please," said the clerk to the detective constable.

"You may sit down," said the magistrate to Alice Brass.

Store detective

In cool, ladylike tones the first witness, replying to the clerk's questions, gave her name as Mary Gordon and her occupation as store detective employed by Sixpenny Shops Limited at their store at 244 High Street. Then "Did you see the accused yesterday?" asked the clerk. It was a leading question, but in view of what the defendant had already said the answer seemed hardly likely to be in dispute. The next matter might, however, prove controversial so Frell merely asked "What time was it when you first saw her?"

"About 3.15 p.m."

"Whereabouts was she then?"

"At the ladies' hosiery counter."

Date, time and place being duly established, the story could now be unfolded. "What did you see her do?" asked Frell.

Miss Mary Gordon had been waiting with some impatience for the opportunity to show that, as an experienced shop detective, she knew how to give evidence without being prompted. She began: "I saw the defendant purchase a pair of stockings and receive change from the assistant. While she was putting the change into her handbag she laid her purchase on the counter on top of a pile of stockings. When she picked up her purchase again she picked up with it another pair of stockings from the pile beneath."

Mr. Sutterthwick went on with his seemingly abstracted doodling on his blotting pad, and Frell still appeared absorbed in his industrious note-taking, but both had remarked the possibilities of this last piece of evidence and were watching carefully the development of the story.

"So far, so innocent," said the magistrate to himself, and "Not too fast please. I have to take a note of all this," said the clerk to the witness.

Miss Gordon continued: "The defendant walked away from the counter holding both pairs of stockings in her hand. I followed her. She walked round several counters, still with the two pairs of stockings in her hand. Eventually at the hardware counter I saw her separate them and put the pair she had not purchased into her overcoat pocket. She continued holding the pair she had bought in her hand as before. She walked round several more counters and finally left the store. I followed her outside and stopped her and asked her if she would come back to the manager's office as there was a query over some stockings. She said 'What stockings? I've paid for them.' I said 'You have a pair in your overcoat pocket which you have not paid for.' She said 'It was a mistake. I did not mean to steal them.' She then returned to the shop with me and I took her to the manager's office. In her presence and hearing I told the manager what I had seen and the defendant produced from her overcoat pocket this pair of stockings." The witness extracted them from a paper bag; Sergeant Quing, the warrant officer, took them from her and solemnly held them up for the magistrate's inspection.

"Are they the same size as the pair she bought?" asked Mr. Sutterthwick.

"Yes, sir," said Miss Gordon, and added, "When she produced the stockings she said to the manager 'Can't I pay for them now?' The police were then sent for and the defendant was given into custody."

The store detective had paused many times during her evidence to allow the clerk's pen to overtake her. Now she came to a final pause feeling that she had omitted no relevant detail from her narrative. But there was still something lacking to complete the legal picture and Frell did not allow the omission to pass. "What is the value of the stockings?" he inquired, and was given the figure which appeared in the charge.

"It was all a mistake"

Mr. Sutterthwick raised his eyes to Alice Brass and said "Do you wish to ask this witness any questions?"

"Stand up, please," murmured Mure at the side of the dock. Alice rose to her feet, looked uncertain for a moment and then said in tones of injured innocence "It was all a mistake as she says. I never meant to steal them. I don't know why they made a charge of it. I offered to pay for the stockings."

"You'll have a chance to tell me all about that in a moment or two," said Mr. Sutterthwick, "But not now. Now's the time for asking the witness questions. If there's anything in her evidence you don't agree with, or any other point you want her to bring out, you should ask her questions to see whether you can't get her to agree with your version of the matter." The magistrate was not optimistic enough to expect that the prisoner would be able to cross-examine to any good purpose, but he could at least take any contradiction or assertion she made and put it himself in correct question form to the witness.

However, all Alice Brass said was "No. I don't want to ask her any questions. I don't know the lady. I never saw her before she stopped me outside the shop. What she's said is quite true—it was all an accident and I offered the money, but she wouldn't take it. I've never done such a thing before in my life."

"Call the next witness, please," said the magistrate.

The detective constable stepped into the box, took the oath in a business-like way and gave his evidence in what was almost a routine formula for such cases. He had been telephoned for, he came, he heard, he arrested. The prisoner, when cautioned, said "Do you have to do this? Can't I pay now? I shall see my solicitor about this." She was taken to the police station where she was formally charged and made no reply. She was searched and on her were two pairs of stockings, £4 9s. 3½d. and other things not relevant to the charge.

The witness stopped and the prisoner was invited to question him. "No," she said, "He's only doing his duty. What he's said is right. I had the money to pay for them. He knows that."

"Is that the case for the prosecution?" asked Frell.

"Yes, your worship," replied the officer.

"Now it's your turn to tell your story," Alice Brass heard the magistrate say. "Are you going to tell it on oath? It carries more weight if you do, but it's perjury if you tell lies on oath. You're not obliged to swear to tell the truth. You can say what you have to from where you are without doing so, if you prefer. Which will you do?"

"I shall speak the truth any way," was Alice's reply to this.

"I hope so. But the question is, are you going to swear to do it? As I've already said, you're not bound to."

"I don't really mind, sir, I'll take my oath if you like."

"It isn't what I like. It's what you like."

"I'm afraid I don't understand these things, sir."

"I'm afraid I can't make it any plainer. The only thing I haven't mentioned that may affect your decision is that you can't be asked questions by anybody if you make a statement from where you are; but you can be cross-examined if you tell your story on oath. But that's only an incidental matter of legal procedure. The essential thing for you to remember is that giving evidence on oath involves making a solemn promise to God to tell the truth."

"I don't mind you asking me questions, sir."

"Do you mean that you want to give evidence on oath? I can't ask you questions otherwise."

"Yes. I suppose that will be best for me?"

"You have to decide that, not me."

"Well . . . yes . . . all right . . . I'll give evidence."

"This way, please," said Mure and escorted her from the large iron pen to the small wooden one. He was responsible for her remaining in custody until the magistrate ordered otherwise, and, although it was very long odds against her attempting to escape, his superiors would never take that as an excuse if the unexpected did happen.

The next step was to get Alice Brass to remove her right glove preparatory to taking the oath. As she had put on her best pair for her court appearance it was rather tight, and to the waiting court minutes appeared to pass before she succeeded in peeling it off. Had she grasped the New Testament in a mailed fist it would not actually have affected the validity of her testimony, but it was the court's custom to emphasise the solemnity of the ceremony by insisting on direct contact between the swearer and the symbol of the oath. Finally Alice Brass's hand was in a fit state to receive "The Book" and in emphatic—almost dramatic—tones she proceeded to "repeat the words on the card," as directed by Mure—and then, unbidden, to kiss the Testament.

"No, don't do that," said the magistrate, too late to stop the lapse into an old usage. He had been watching her closely out of the corner of a downcast eye, and her would-be impressive manner of taking the oath made him fear, from experience, prevarication and mental dishonesty.

"I offered to pay"

After she had given her name and address to Frell and stated, in reply to his further question, that she was a married woman, she admitted it was true that she had bought a pair of stockings in "Sixpenny Shops" at about the time mentioned by the shop detective. With these formal preliminaries and undisputed facts on record, her evidence was brought to the point where she must give her story unprompted.

"Now tell the magistrate what happened after that. And don't go too fast," said the clerk.

"Well, sir," said Alice, "I must have picked the other pair up by mistake. I didn't know I'd got them until all of a sudden I happened to look down and I saw them in my hand. But I didn't mean to steal them and I offered to pay, but they wouldn't take the money. And that's all that happened, sir."

"But why didn't you take them back to the counter when you noticed them in your hand?" queried Mr. Sutterthwick.

"Well, I got confused and I didn't know what I was doing. I've never had such a thing happen to me before, you see, sir, and I got afraid. I didn't think they'd believe me."

"But you knew the stockings weren't yours," persisted the magistrate.

"Yes, I suppose I did," acknowledged Alice. "I see now I was silly. But I didn't think of it that way at the time."

"And you walked out of the shop with them instead of either taking them back or paying for them?"

"Yes, sir. But I offered to pay afterwards."

"Don't you think that's stealing?"

"Yes, I suppose it is in a way. But I didn't mean it. I didn't know I'd taken the other pair of stockings off the counter."

"Does it make any difference in view of what you did afterwards?"

"Well, I thought it did," said Alice, doubtfully. She did not know, as the magistrate and clerk did, that after sixty years of doubt, the guilt of a person who decides to keep something he has obtained by mistake had been made clear.[1] There was nothing left for Mr. Sutterthwick to ask except "Have you anything else you wish to say?"

"No, I don't think so," was the reply, "Except that I hope you'll be lenient with me and give me another chance. I did offer to pay."

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[1] *R.* v. *Hudson* [1943] K.B. 458; 29 Cr.App.R. 65.

"Will you go back then, please," and escorted by Mure she returned to the dock.

"Have you any witness you wish to call?" inquired Frell.

"No, sir. There was nobody with me."

"I find you guilty—indeed you've really admitted it yourself now," said the magistrate, and turned to the detective constable with "What is known about her?"

Other occasions and their effect

The officer came back into the witness box, this time with a folder in his hand, and announced "The defendant, your worship, has been in trouble once before. Eighteen months ago she appeared before the magistrates' court for the district where she was then living. She was discharged absolutely on payment of twenty shillings costs for stealing a vest and knickers from a shop. She is a married woman, aged thirty-two, with one child six years old. Her husband is a clerk earning £8 per week and he gives her £5 a week for housekeeping. They are buying their house and paying 25s. 6d. a week on the mortgage. Her home is clean, comfortably furnished and well kept."

"Is that all true, what the officer's just said?" asked the magistrate of Alice Brass.

"Yes, sir," she replied, very subdued now.

"Is there anything else you want to say?"

"No, sir." Alice put her hands to grasp the rail of the dock and waited with strained attention to hear her fate.

Mr. Sutterthwick leant back and a slight frown creased a little more his puckered face. Was the picking up of the second pair of stockings indeed an accident, or the cunning taught by previous experience? The woman showed no sign of real shame; she gave no indication she was sorry for anything except that she had been found out. But could one say she had no moral sense or self-respect? She was probably quite honest in other matters; she would not rob her employer if she had one; she would not steal if left alone in a neighbour's house; she was a good housewife and mother; in ordinary parlance she was a respectable woman. Only she could not resist the temptation of the big stores. But they were entitled to the protection of the law. The unpleasantness of Alice Brass's first appearance in court had not proved a sufficient deterrent. A sterner lesson was necessary. Should the sentence be a substantial fine? That might be only a debit entry to set against a long tally of petty thefts which would still show a handsome profit; or it might even provide the financial motive for further shoplifting. On the other hand a sentence of imprisonment would be a terrible disgrace for a woman with a normal family life in the community. There was another course open which, although it did not sound so bad, would have the same practical effect on the defendant. Mr. Sutterthwick could remand her in custody for further reports on her, before he came to a final decision on the appropriate sentence. If prison was to cure her at all, that short period on remand would probably be as efficacious as a six months' sentence. The remand must not, of course, be expressed to be a punishment but if it had that incidental effect so much the better for Mr. Sutterthwick's purpose. The pause while he weighed the situation and made up his mind had only lasted a second or two.

"You will be remanded for seven days in custody," he said, "I shall have to consider your case and I want a probation officer's report on you."

"This way, please," said Mure, taking her arm gently and leading her out through the door to Sergeant Chumbleton, the gaoler, before she had fully realised the import of the words she had just heard. There was an art in moving from the court room those who were to remain prisoners; it had to be done swiftly enough to prevent a "scene" but not, of course, before the magistrate had finished his say. Most defendants accepted their fate without emotional outbursts but the assistant gaoler's tactful judgment had often with the minority prevented disturbance of the judicial calm of the court room.

It was not until Alice Brass had been passed by Sergeant Chumbleton to Policewoman Labbiss that in a flood of tears she began to wail "Oh, what will my husband say?" Policewoman Labbiss couldn't answer that, but she could and did offer one of her cups of tea and send word to Miss Garrafrey, the probation officer.

Corrective Training and Release on Licence

By T. E. James, M.A., B.C.L., *Barrister-at-Law*

R. v. Albury

Some difficulty may be experienced in cases for which a sentence of corrective training has been given when the prisoner has committed other offences. The problem arose in *R.* v. *Albury* [1951] 1 K.B. 680; 35 Cr.App.R. 12. In this case the prisoner had been sentenced at quarter sessions to two years' corrective training; he asked for ten other offences to be taken into consideration. He was sentenced to a further two years' corrective training, the sentences to run consecutively. The Court of Criminal Appeal considered that sentences of corrective training could run consecutively in the same way as two sentences of imprisonment. An alternative to a second period of corrective training would be a sentence of imprisonment; but in the recent case of *R.* v. *Talbot* [1953] 1 Q.B. 613; 37 Cr.App.R. 23, it was held that a sentence of imprisonment could not be passed so as to take effect on the conclusion of a prior sentence of corrective training. If this were not so, any value derived by the prisoner from the corrective training might be nullified by the subsequent imprisonment. The sentence of imprisonment must be concurrent with the sentence of corrective training. This means in effect, according to the Lord Chief Justice in *R.* v. *Talbot*, that the whole sentence must be served in corrective training, although it would seem to be a possible alternative for any remaining period of the concurrent corrective training sentence to be served after the expiration of the term of imprisonment.

Release on licence

However, when a prisoner is brought before a court for another offence, a distinction has to be made between the case when the prisoner is still serving the first sentence of corrective training and that when he has been released on licence. Section 26 (6) of the Prison Act, 1952 (which, in effect, re-enacts most of paragraph 5 of the Third Schedule to the Criminal Justice Act, 1948), provides:

> "If a person while released on licence, or after he is recalled to a prison, as aforesaid, is sentenced by a court in any part of Great Britain to corrective training or preventive detention, the sentence by virtue of which he is on licence or has been recalled shall cease to have effect."

This section envisages a person who has been sentenced to corrective training, being released on licence and then committing an offence. The Prison Commissioners have, of course, the power to recall the prisoner and make him serve the remaining portion of the sentence of corrective training in prison (section 26 (4) of the Prison Act, 1952); but, on a further sentence of corrective training being imposed, the court must take into consideration the fact that the old sentence will cease to have effect and the length of the second sentence must be adjusted accordingly. The report of the Prison Commissioners under section 21 (4) of the Criminal Justice Act, 1948, very naturally, would not recommend a further sentence of corrective training in the majority of cases. In such a case, the Lord Chief Justice pointed out, in *R.* v. *Wilsher* [1953] 1 W.L.R. 844; 37 Cr.App.R. 110, there is no reason at all why a court should not pass a sentence of imprisonment because it had been shown that corrective training had done no good. If this is done, section 26 (6) of the Prison Act, 1952, would not be applicable.

The question then remains, in such an event, how the remaining portion of the corrective training sentence will be served. Section 26 (6) of the Prison Act, 1952, does not re-enact that part of paragraph 5 of the Third Schedule of the Criminal Justice Act, 1948, which provided, in effect, that the imprisonment and corrective training sentences should run concurrently. Presumably, no further regard will be paid to the corrective training sentence or, alternatively, after the expiration of the term of imprisonment, taking into account any remission, any remaining period of the concurrent corrective training sentence might then be served.

Practice and Procedure

Divisional Court

Form of case stated

In *Turier* v. *Webber* ([1954] 1 W.L.R. 808, see also p. 468) an appeal from justices by case stated Lord Goddard C.J. said: "Special cases for the use of the court ought to be prepared on foolscap and not on brief as this is more convenient for the court. I hope in future this will be done."

Quarter Sessions

Procedure on application for removal of disqualification to drive

Rule 78 of the Magistrates' Courts Rules, 1952, lays down the procedure to be followed when a person who has been disqualified by a summary court from holding or obtaining a driving licence applies for removal of the disqualification under section 7 (3) of the Road Traffic Act, 1930. The procedure is by way of complaint against the superintendent of police and ensures that both sides are heard when the application is made to the court.

When a court of quarter sessions makes an order of disqualification any application to restore the licence must be made to that court. As with summary cases the application is made under section 7 (3) of the Road Traffic Act, 1930, but no procedure is laid down.

An application for restoration of a licence can be made by way of motion, either by an applicant in person or by counsel on his behalf. But an *ex parte* motion is an unsatisfactory way of dealing with such an application, and most, if not all, courts of quarter sessions require the police to be given the opportunity of appearing. This can be done by adjournment but fortunately this should seldom be necessary. In most cases the applicant himself or by his solicitors inquires of the clerk of the peace how and when the application can be made. No doubt there are differences in practice, but a convenient one which is followed by some busy courts is for the clerk of the peace to inform the applicant that he should give notice of his intention to the police officer concerned and when the date for the hearing is fixed to notify both the applicant and the police. It is for the police authority to arrange for representation by counsel when this is necessary and this is usually done under a standing authority as with prosecutions. In some cases when the police do not oppose restoration of the licence they so inform the clerk of the peace before the hearing and are not represented.

Such arrangements work smoothly in practice but owing to local differences in the procedure of courts of quarter sessions an intending applicant should always consult the clerk of the peace before taking any other steps in the matter. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Detention centre

Home Office Circular No. 76/1954, dated March 26, 1954, announces the opening of a detention centre at Blantyre House, Goudhurst, Kent, for young male persons (see below). The centre is not available for persons who have been granted time to pay a fine or the amount due under a forfeited recognisance under section 14 (1) of the Criminal Justice Act, 1948, since under the terms of the statutory direction to the sheriff contained in section 2 of the Levy of Fines Act, 1822, and in the writ scheduled thereto, the defaulter must be lodged in the common gaol. This restriction does not apply in regard to fines enforceable summarily. (See also Circular 79/1954 below.)

Magistrates' Courts

Detention centre

Home Office Circular No. 79/1954, dated March 26, 1954, states that a detention centre at Blantyre House, Goudhurst, Kent, will be available from April 1, 1954, for the reception of male persons who have reached the age of seventeen but not the age of twenty-one years.

An order for detention in a detention centre may be made only where the court has power to impose imprisonment and may not be made (a) if the offender has previously been sentenced to Borstal training or imprisonment; or (b) if the offender has previously been ordered to be detained in a detention centre since attaining the age of seventeen years.

Section 18 (2) requires the court, before ordering a person to be detained in a detention centre, to consider every other method (except imprisonment) of dealing with the case and to be of the opinion that none of those methods is appropriate. Section 67 of the Magistrates' Courts Act, 1952, deals with the case of a person ordered to be detained in default of the payment of any sum of money.

Giving some particulars of the proposed régime at Blantyre House, the Circular states that the primary purpose of a detention centre is to provide short, sharp punishment designed to bring home to the offender the gravity of his situation. It is important that those sent to a centre should be physically fit for the fairly strenuous activities that will be carried on there. The experience already gained at Campsfield House junior centre may not prove to be applicable to a senior detention centre; but the justices may like to know that it has been found there that boys who have had previous institutional training and failed are in general not likely to benefit from detention in a centre.

The centre at Goudhurst will provide simple and secure accommodation for some seventy boys. There will be brisk activity under strict discipline and supervision, beginning with early morning physical training followed by domestic duties and work. In the evening, there will be classes for further education, physical training, gymnastic instruction and other activities. Particular attention will be given to the inculcation of personal standards of cleanliness, obedience and good manners.

Rule 26 of the Detention Centre Rules, 1952, provides that where detention is for a period exceeding one month remission of up to one-sixth of the period may be earned by good conduct and industry, so that, if full remission is earned, about two and a half months of a three months' period will be served.

It will be necessary for persons ordered to be detained in a detention centre to be conveyed by the police direct from the court to the centre.

The forms of commitment to a senior detention centre are prescribed in the Magistrates' Courts (Forms) Rules, 1952 (S.I. 1952, No. 2191) (L. 19)), Forms 39 and 51.

Case and Comment

[Reports of cases included here are prepared by C. J. ELLIS, *Barrister-at-Law*, unless otherwise appears]

Accessory—*Accessory after the fact to murder—failure to report murder*

NKAU MAJARA *v.* R.[1] (Judicial Committee of the Privy Council: Lords Goddard C.J. and Reid and Mr. L. M. D. de Silva: March 23, 1954) ([1954] 2 W.L.R. 771).

The appellant, a gazetted headman in Basutoland, who, as a headman, was under a legal duty to arrest any native who commited an offence for which an arrest could be made without a warrant, *e.g.*, murder, was convicted of being an accessory after the fact to murder and sentenced to twelve years' hard labour. The trial judge found that the appellant knew that a ritual murder had been committed, that he knew that the body had been thrown over a cliff but did nothing about it for three days, and that he failed to report immediately the ritual murder and give prompt assistance to the police.

On behalf of the appellant it was submitted that under the Roman-Dutch common law in force in South Africa the term accessory after the fact was to be given the same meaning as in English law. It was conceded on behalf of the Crown, that under English law the appellant could not have been guilty of being an accessory after the fact, but it was contended that the position was different under South African law.

Held, dismissing the appeal, that (1) to constitute a person an accessory after the fact in South Africa it was sufficient to establish that assistance was given to the principal offender in circumstances from which it would appear that the giver "associated" himself with the offence committed. That law made no distinction between assistance given by remaining inactive or by doing something.

(2) Impassivity, when it occurred after the commission of an offence by another and had for its object the giving of

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[1] For the appellant: *S. N. Bernstein* (instructed by Hy. S. L. Polak & Co.). For the Crown: *J. G. Le Quesne* (instructed by Charles Russell & Co.).

assistance to that other to escape, was under South African law punishable as the offence of being an accessory after the fact.

COMMENTARY. In England an act of omission such as that of the appellant constitutes the offence of misprision of a felony.
See Archbold, 33rd ed., 1507, 1511.

Contempt of Court—*Interference with the course of justice—vicarious responsibility*

R. *v.* EVENING STANDARD Co.[2] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Hallett JJ.: March 29, 1954) ([1954] 2 W.L.R. 861; [1954] 1 All E.R. 1026).

X was charged with the murder of his wife. A newspaper reporter, attending the trial, telephoned information to his newspaper that Mrs. Y had given evidence that X asked her to marry him. That information was printed in the newspaper in a report of the case. Mrs. Y had in fact given no such evidence. Before the examining magistrates Miss Z said that X asked her to marry him, but at the trial her evidence was ruled to be inadmissible as it was prejudicial to X. The Attorney-General applied for leave to issue a writ of attachment against the newspaper proprietors, the editor and the reporter. According to an affidavit filed by the editor, the reporter concerned was an experienced and trusted reporter, who had proved himself reliable and competent. The editor and proprietors printed the report in good faith. The reporter had had no intention of reporting anything that had not been said and could not explain how he made the mistake. The three defendants expressed their apologies to the court. Counsel for the newspaper proprietors and the editor said that while his clients wished to abide by the well-understood rule of journalism that they should take responsibility, he submitted that they ought not to be made vicariously responsible for the mistake of the reporter.

Held, allowing the application, that (1) there was no intentional interference with the course of justice. The reporter had not deliberately sent out false information. No moral blame could be attached to the editor and one could only be thankful that the matter did not react unfavourably on X (who was acquitted).

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[2] For the applicant: *Sir Reginald Manningham-Buller S.-G., Q.C., J. P. Ashworth* (instructed by the Treasury Solicitor). For the proprietors and the editor: *Sir Hartley Shawcross Q.C., Helenus Milmo* (instructed by Allen & Overy). For the reporter: *G. D. Roberts Q.C., T. G. Roche* (instructed by Withers & Co.).

(2) The court could not agree with the submission that the proprietors and editor should not be made vicariously responsible, which seemed contrary to the judgments in *R.* v. *Payne* ([1896] 1 Q.B. 577), where it was pointed out that the court would interfere where the publication was intended or calculated or likely to interfere with the course of justice. In *St. James's Evening Post* case ((1742) 2 Atk. 469) Lord Hardwicke, who was asked not to punish a publisher because she did not know the nature of the paper said that "if they print anything that is libellous, it is no excuse, to say, that the printer had no knowledge of the contents, and was entirely ignorant of its being libellous."

(3) A substantial penalty would have to be imposed because a very grave mistake had occurred which might have done incalculable harm. No penalty would be imposed on the editor who had no reason to doubt the accuracy of the report, similarly in the case of the reporter who made an honest mistake. The proprietors would pay a £1,000 fine.

COMMENTARY. See also *R.* v. *Gunn, ex p. Attorney-General* [1954] Crim.L.R. 53; *R.* v. *Hargreaves, ex p. Dill* [1954] Crim.L.R. 54.

See Archbold, 33rd ed., 1273–5.

Customs and Excise—*Forfeiture of goods—Limitation of proceedings for forfeiture*

COMMISSIONERS OF CUSTOMS AND EXCISE *v.* TRUSTEE OF THE PROPERTY OF SOKOLOW (A BANKRUPT)[3] (Q.B.D.: Hilbery J.: March 5, 1954) ([1954] 2 W.L.R. 575; [1954] 2 All E.R. 5).

In 1949 certain securities were imported into England without the permission of the Treasury and delivered to S. The importation was prohibited by the Exchange Control Act, 1947, a section of which made enactments relating to customs applicable to such documents. Section 177 of the Customs Consolidation Act, 1876, provided for forfeiture of prohibited goods imported into the United Kingdom, by virtue of which the plaintiffs seized the documents which were lodged in a bank. In 1952, the plaintiffs as required by the Act of 1876, gave notice to S., who had been adjudicated bankrupt; his trustee in bankruptcy claimed the goods and sent a notice of claim to the plaintiffs. After such a notice section 207 of the Act of 1876, required that "proceedings shall be taken for the forfeiture . . ." of the goods ". . . by information filed in the . . . High Court. . . ." The trustee, by his defence, alleged that the action was a suit within the meaning of section 257 of the Act of 1876 and should have been brought within three years from the date of importation.

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[3] Counsel for the plaintiffs: *J. P. Ashworth* (instructed by the Solicitor for Customs and Excise). For the defendant: *F. H. Lawton* (instructed by Nordon & Co.).

Held, giving judgment for the plaintiffs, that the section did not apply to proceedings to determine the liability to forfeiture of goods already seized, but only applied to suits for an offence under the Acts.

COMMENTARY. Section 257 of the Customs Laws Consolidation Act, 1876, now replaced by section 283 of the Customs and Excise Act, 1952, provided: "All suits, indictments or informations brought or exhibited for any offence against the Customs Acts in any court . . . shall be brought or exhibited within three years next after the date of the offence committed."

Evidence—*Statement taken by the police—evidence omitted from the statement by the police*

R. *v.* FRAMPTON [4] (Court of Criminal Appeal: Lord Goddard C.J., Hallett and Pearson JJ.: April 12, 1954) (*The Times*, April 13, 1954).

F. was convicted of the larceny of a boat and sentenced to nine months' imprisonment. He appealed against conviction. The court gave leave for D., who had given evidence at the trial that he bought the boat, the subject-matter of the charge, from F., to give further evidence. D. said that when purchasing the boat he made inquiries from the previous owner to be sure that there was no hire-purchase agreement operating in respect of the boat, and was told that the boat had been sold to F.'s uncle. F.'s uncle subsequently told D. that he gave the boat to F. D. made a long statement about the matter to a police constable who took it down in longhand. D. read and signed it. The constable later gave D. a typed statement which he signed without reading. The typed statement contained nothing about D.'s interview with F.'s uncle. D. when giving evidence at the trial did not get an opportunity to say anything about it. No police officer from the district was present in the Court of Criminal Appeal.

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[4] For the appellant: *David Stinson* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *R. A. Macdonald* (instructed by Gordon Burke & Co., Cowes).

Held, allowing the appeal, that it was most regrettable that no police officer was called. D.'s evidence stood uncontradicted and the conviction would clearly have to be quashed. F. had not suffered through the wrongful conviction because at the time when he was sentenced he was serving a sentence of imprisonment for another offence. The matter would be reported to the Home Secretary.

Food and Drugs—*Meat—deficiency of weight—exercise of due diligence*

TURIER *v.* WEBBER[5] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 5, 1954).

X, a butcher, was charged with an offence under the Sale of Food (Weights and Measures) Act, 1926. He delivered meat to a hospital. When he arrived, some enforcement officers weighed the meat, which was 10 lbs. short. X then went back to his shop and produced two packages of meat. He told the magistrates that he had prepared the meat the previous night and put it in the refrigerator. The next morning he took all the meat out and put it on the counter where he left the two missing packages. The magistrates found that there was a deficiency which was due to a *bona fide* mistake in spite of all reasonable precautions having been taken and due diligence exercised and they dismissed the information. On appeal:—

Held, allowing the appeal, that the butcher was not exercising due diligence when he admitted to being careless. If the justices did not understand the section the court would put them right; if they did, their finding was clearly perverse. The case was to go back to the magistrates with an intimation that the offence was proved and it was their duty to impose a penalty.

COMMENTARY. Sale of Food (Weights and Measures) Act, 1926, s. 12 (2): "In any proceedings under this Act in respect of an alleged deficiency of weight . . . if the defendant proves to the satisfaction of court that such deficiency was due to a *bona fide* mistake or accident, or other causes beyond his control, and in spite of all reasonable precautions being taken and all due diligence exercised by the said defendant to prevent the occurrence of such deficiency . . . the defendant shall be discharged . . ."

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[5] For the appellant: *Paul Wrighton* (instructed by Sharpe, Pritchard & Co.). For the respondent: *Phillimore Q.C.*, *Herrick Collins* (instructed by Reed & Reed).

Food and Drugs—*Milk—cleanliness of bottle*

JONES *v.* BRYN DAIRY[6] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: April 30, 1954) (*The Times*, May 1, 1954).

Bryn Dairy were charged with failing to ensure that a bottle containing milk was "in a state of thorough cleanliness" before use, contrary to regulation 26 (1) of the Milk and Dairies Regulations, 1949. The justices found that Bryn Dairy had sold a bottle of milk, which had a small quantity of dust inside which was visible to the naked eye. The bottle had been washed and sterilised. The justices dismissed the information. On appeal by case stated:—

Held, allowing the appeal, that dairymen must see that their bottles were clean, but no harm had been done and it was a case in which the justices might very well have given an absolute discharge or certainly a conditional discharge. The case was remitted to the justices; the penalty, if any, was a matter for them.

Indictment — *Evidence as consistent with stealing as with receiving—alternative counts.* See R. *v.* SEYMOUR, p. 475.

Larceny—*Indictment—evidence as consistent with receiving as with stealing.* See R. *v.* SEYMOUR, p. 475.

Police—*Statement taken by police—omission of evidence from the statement by the police.* See R. *v.* FRAMPTON, p. 467.

Quarter Sessions—*Appeal to—power of appeal committee to award costs*

R. *v.* MIDDLESEX QUARTER SESSIONS, *ex p.* BELSIZE FINANCE[7] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 3, 1954).

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[6] For the appellant: *J. E. S. Ricardo* (instructed by T. D. Jones & Co., for T. R. Evans and Hughes, Holyhead). For the respondents: *Charles Lawson* (instructed by E. P. Hanney for H. Jenkins & Hughes, Holyhead).

[7] For the applicants: *J. Platts-Mills* (instructed by Kennedy, Genese & Syson). For the justices: *F. H. Lawton* (instructed by Clifford Radcliffe). X was not represented and did not appear.

The applicants, a firm of hire-purchase financiers, prosecuted X for theft. X had bought a car from the prosecutors on hire-purchase terms. He had been an unsatisfactory payer and had sold the car before all the instalments had been paid (about £21 was outstanding). The justices convicted X of larceny and sentenced him to four months' imprisonment. X appealed to quarter sessions against conviction. Notice of appeal was served on the prosecutors who appeared at the hearing; X there announced that he would not proceed with his appeal against conviction, but only appeal against sentence. Counsel for the prosecutors said that the police had refused to prosecute and the prosecutors had themselves instituted proceedings because they would then be able to get an order revesting the car in them. The Appeals Committee gave X an absolute discharge and awarded him ten guineas costs. The prosecutors' application to quarter sessions to state a case for the opinion of the Divisional Court was refused on the ground that their request was frivolous and the committee's decision did not involve a question of law. The prosecutors then applied for an order of mandamus ordering quarter sessions to state a case.

Held, granting an order of certiorari to quash the order for costs, that a question of law did arise. The committee purporting to exercise a judicial discretion over costs acted in a way which was not judicial by taking into account the fact that they disapproved of the bringing of the prosecution; that might be a ground on which they could deprive the prosecutors of costs but was not a ground on which they could order them to pay costs. The justices acted in a way which could not be justified.

COMMENTARY. As an appeal against conviction before the appeals committee of quarter sessions puts in issue the whole case including the question of sentence, the prosecutors were right to be present because they had to uphold the conviction. It was submitted by counsel for the justices that they had a discretion to make any order as to costs that they thought fit under the Summary Jurisdiction Act, 1879, s. 31 (1) (vii) (as substituted by the Summary Jurisdiction Appeals Act, 1933, s. 1), which states: ". . . Quarter Sessions may also make such order as to costs to be paid by either party as they think just. . . ."

See Stone, 85th ed., 143–4.

Receiving—*Indictment—evidence as consistent with stealing as with receiving.* See R. *v.* SEYMOUR, p. 475.

Road Traffic—" *C* " *licence—carriage for hire or reward*

CORBETT AND MILLER *v.* BARHAM [8] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 4, 1954).

The appellants, gravel merchants, were charged that they, being the holders of " C " licences in respect of their vehicles, used the vehicles for carriage of goods for hire or reward contrary to the Road and Rail Traffic Act, 1933. The appellants were under contract to the X Co., who were erecting a school, to take away the surplus earth, and by the contract the X Co. agreed to pay the appellants 3s. for every cubic yard removed. At the time that the appellants entered into that contract they were under contract to Y to fill in his pond with spoil. It was contended for the prosecution that the 3s. per cubic yard paid by the X Co. was paid solely for the removal of spoil and that by removing it the appellants were carrying goods for hire or reward and the removal of the spoil did not come within the exception in section 1 (5). The appellants contended that the spoil constituted goods sold or used in connection with their business and came within the exception. The justices convicted the appellants, being of the opinion that the vehicles were used primarily for the purpose of removing spoil for reward.

Held, dismissing the appeal, that although the vehicles were used for delivery or collecting goods, they were none the less being used for hire or reward. If the X Co. had not paid for the removal of the spoil there would have been no offence committed. The matter was put beyond doubt by the provisions of section 2 (4).

COMMENTARY. Road and Rail Traffic Act, 1933, s. 1: " (1) Subject to the provisions of this Part of this Act, no person shall use a goods vehicle on a road for the carriage of goods—(*a*) for hire or reward . . . (5) For the purposes of this Part of this Act—(*a*) the delivery or collection by a person of goods sold, used or let on hire or hire purchase in the course of a trade or business carried on by him; (*b*) the delivery or collection by a person of goods which have been, or are to be, subjected to a process or treatment in the course of a trade or business carried on by him . . . shall not be deemed to constitute a carrying of the goods for hire or reward."

Section 2 (4): " A private carrier's licence (. . . referred to as 'a C licence') shall entitle the holder . . . to use the authorised vehicles for the carriage of goods for or in connexion with any trade or business carried on by him, subject to the condition that no vehicle which is for the time being an authorised vehicle shall be used for the carriage of goods for hire or reward."

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[8] For the appellants: *Percy Lamb Q.C.*, *L. Jellinek* (instructed by Field, Roscoe & Co. for Gotelee & Goldsmith, Ipswich). For the respondent: *J. P. Ashworth* (instructed by the Treasury Solicitor).

See Stone, 85th ed., 2126.

Road Traffic—*Driving without effective insurance—conditional discharge not to be used to avoid disqualification*

DENNIS *v.* TAME [9] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 4, 1954).

T., a member of the R.A.F., was charged with unlawfully using an uninsured motor-car on a road. He pleaded guilty. The facts were that T. drove out of a R.A.F. station on to a main road where he was stopped by a policeman and asked for his insurance certificate. He said that he was going to a neighbouring town to see if he could get the car insured. The justices, having been told that T. had been dealt with, in respect of the offence, by his commanding officer and sentenced to seven days' detention, gave him a conditional discharge. On appeal by case stated it was argued for the appellant that *Taylor* v. *Saycell* ([1950] 2 All E.R. 887) contemplated that there might be a case in which a conditional discharge might be granted although no special reasons existed.

Held, allowing the appeal, that a conditional discharge could not be used to avoid imposing a disqualification from driving where the Road Traffic Act, 1930, required disqualification. A conditional discharge might only be granted in such a case where circumstances existed which amounted to special reasons justifying the justices in not imposing a disqualification. The case was remitted to the justices with a direction that they must impose a penalty, which could be a nominal amount, and disqualification, since no special reason existed. The justices could impose a disqualification only in respect of private cars, thus leaving T. free to drive service vehicles.

COMMENTARY. In *Taylor* v. *Saycell, supra,* Lord Goddard C.J. said at p. 889: "There can be no doubt that there is jurisdiction in the court to discharge conditionally and thereby to avoid the necessity of disqualification. Because, however, it is within the jurisdiction of a court to make that order it by no means follows that they should do so, unless in the most exceptional circumstances. In *Gardner* v. *James* [1948] 2

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[9] For the appellant: *N. MacDermot* (instructed by Gibson & Weldon). For the respondent: *Paul Curtis-Bennett* (instructed by Theodore Goddard & Co.).

All E.R. 1069 . . . I said: 'It is very difficult indeed to see how justices can be justified in [granting an order of conditional discharge] on reasons which would not constitute special reasons entitling them to refuse, on conviction, to suspend the licence.'"

See Stone, 85th ed., 2082–5.

Road Traffic—*Driving without effective insurance—effect of evidence that insurance company considered themselves still on risk*

HOBBS *v.* COLE[10] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: April 29, 1954) (*The Times*, April 30, 1954).

H. was charged with driving a car without effective third-party insurance cover. His car, with a trailer attached, was found parked in a square. H.'s insurance cover for the car was excluded when it was drawing a trailer. At the hearing before the justices, H. called the local manager of his insurers, who said that the insurers considered themselves on risk, because they considered that H.'s failure to obtain cover while his car was drawing a trailer was due to a misunderstanding on his part. The justices convicted H. and disqualified him from driving for a year, holding that there were no special reasons to enable them not to disqualify him. On appeal, by case stated, H.'s counsel drew attention to *Pilbury* v. *Brazier* ([1951] 1 K.B. 340) in which Lord Goddard C.J. said that if an approved insurance company told the court that in the circumstances of the case they would consider themselves on risk, then "it cannot be said that there does not exist a special reason for the justices to refuse to disqualify."

The court remitted the case to the justices asking them to inform the court whether on the evidence, the insurance company had considered the case and expressly authorised their manager to inform the court that they would not have relied on the exception clause if an accident had occurred.

COMMENTARY. In *Pilbury* v. *Brazier, supra,* the insurance in respect of a taxicab was suspended while the vehicle was being repaired. When it was taken back into service the defendant forgot to notify the insurers. The insurers, however, told the police that in the circumstances they would have considered themselves on risk had an accident occurred calling for indemnity under the policy. It was held that special reasons existed to justify the justices in refraining from imposing disqualification.

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[10] For the appellant: *A. M. Wallace* (instructed by Maddisons & Lambs). For the prosecutor: *Malcolm Wright Q.C.* (instructed by E. P. Rugg & Co. for R. L. Frank & Caffin, Truro).

See Stone, 85th ed., 2082–5.

Road Traffic—*Public service vehicle—failure to insure safety of passenger*

NICHOLSON *v.* GODDARD[11] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 5, 1954).

An elderly lady who was a passenger in a bus on an evening in November, 1953, told the conductor of the bus that she wished to dismount at a particular point. As the bus was slowing up, but before it stopped, the conductor pressed a button controlling the sliding door which opened. The lady stepped down and fell. The conductor was prosecuted before the Hove justices on December 18, 1953, for failing to take "all reasonable precautions to ensure the safety of passengers . . . alighting from the vehicle" contrary to regulation 4 of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1936.

At the close of the prosecution's case the solicitor appearing for the respondent submitted that, on the evidence, there was no case to answer. The justices upheld the submission and dismissed the case. The prosecutor appealed:—

Held, allowing the appeal, that the justices' decision was clearly wrong. In the case of a bus with sliding doors opening by a press button operated by the conductor, the opening of the door is an invitation to alight, and the reasonable precaution which the conductor should have taken to ensure the passenger's safety was not to open the door until the bus came to a standstill. In the opinion of the court there was an extremely strong case to answer, and the case would, therefore, be remitted to the justices. [Reported by Mrs. E. M. Wellwood, *Barrister-at-Law.*]

COMMENTARY. See Stone, 85th ed., 2852.

Sentence—*Borstal training—application to vary sentence on ground of accused's pregnancy*

R. *v.* FELL[12] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Hallett JJ.: March 29, 1954).

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[11] For the appellant: *David E. Peck* (instructed by Sharpe, Pritchard & Co., agents for H. S. Martin, County Hall, Lewes). For the respondent: *Patrick O'Connor* (instructed by Lewis, Holman & Lawrence).

[12] For the appellant: *Edward Gardner* (instructed by R. Norton Ellen). The Crown was not represented.

The appellant, a young woman of twenty, pleaded guilty to two charges of obtaining money by forged instruments arising out of frauds in connection with a Post Office savings account and asked for fourteen other cases to be taken into consideration. She was sentenced to Borstal training. Dismissing the appeal against sentence, Lord Goddard C.J. said that he supposed the reason the court was asked to vary the sentence was because the appellant was pregnant. Although Borstal training was hardly a punishment in such a case, it was as well in the circumstances that she should go to Borstal and the court would not order imprisonment.

Trial—*Adjournment—defendant not informed of date of adjourned hearing*

R. *v.* WINCHESTER JUSTICES, *ex p.* ELMER[13] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: April 29, 1954) (*The Times*, April 30, 1954).

E., a public service vehicle driver, was charged with exceeding the speed limit. When summoned, he told the police that the date fixed for the hearing was inconvenient and asked for an adjournment. The police agreed, and the officer concerned said that E. would be notified of the date of the hearing. The case was called on without E. being informed and he was convicted and fined £5 in his absence. E. applied for an order of certiorari to quash the conviction.

Held, allowing the application, that as the summons had been served the magistrates had jurisdiction to hear the case, and the hearing was not a nullity because they had proceeded in E.'s absence; but as E. had been misled by the prosecution the conviction could not stand.

Trial—*Evidence as consistent with stealing as with receiving—indictment—direction to jury*

R. *v.* SEYMOUR[14] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Pearce JJ.: April 5, 1954) ([1954] 1 W.L.R. 678; [1954] 1 All E.R. 1006).

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[13] For the applicant: *Robert Hughes* (instructed by Marsden, Burnett & Davy for Faithfull, Gardner, Stanier & Thomas, Winchester). For the respondents: *D. A. Grant* (instructed by Arthur Hunt & Hunt for Kingswell & Berney, Gosport).

[14] For the appellant: *Leo Clark* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *K. G. I Jones* (instructed by Sheppard & Fullbrook, Reading).

S. was charged on an indictment containing one count of receiving a shotgun knowing it to have been stolen. He was convicted and sentenced to three years' imprisonment. S. appealed against conviction on the ground that the evidence against him was only consistent with stealing, and as there was no count charging him with larceny he was entitled to be acquitted.

Held, allowing the appeal, that as there was no charge of stealing, the court could not alter the verdict and therefore, as the evidence was that S. stole the gun and did not receive it, the conviction would be quashed.

The court laid down the following direction: "In cases where the evidence is as consistent with stealing as with receiving, the indictment ought to contain a count both for stealing and for receiving. The jury should then be directed that it is for them to come to the conclusion whether the accused was the thief or whether he received the property from the thief, and they should be reminded that a man cannot receive from himself. Then . . . if the jury come to the conclusion that it is a case of receiving, they should be discharged from giving a verdict on the stealing count. Equally, if they come to the conclusion that it is stealing, they should be discharged from giving a verdict on the receiving count."

COMMENTARY. In *R.* v. *Loughlin* (1951) 35 Cr.App.R. 69 the court attempted to correct the view that where there is no positive evidence that a man stole goods, but he can fairly be said to be in recent possession, then he should be found guilty of receiving and not stealing.

The reason for the direction given in this case was put by Lord Goddard C.J. when he said "Sometimes we have had to quash a conviction, say, for receiving because the court has come to the conclusion that the evidence showed that the offence committed was stealing and not receiving. If a verdict has been returned on the stealing count, this court cannot substitute for the verdict of receiving a verdict of stealing, as it can under section 5 of the Criminal Appeal Act, 1907, if the jury have been discharged from giving a verdict on the stealing count."

See Archbold, 33rd ed., 200, 337, 575, 679, 682, 683, 688, 781.

Acts and Orders

Aliens

ALIENS (APPROVED PORTS) ORDER, 1954 (S.I. No. 391): operative April 1, 1954.

The approved ports for the purposes of the Aliens Order, 1953, are listed in this Order. They are the same as those approved under the repealed Aliens Order, 1920, with the addition of the airport of Rhoose.

ALIENS (LANDING AND EMBARKATION) (FORMS) ORDER, 1954 (S.I. No. 392): operative April 1, 1954.

The colour, size, material and contents of the landing and embarkation cards required by aliens under article 7 of the Aliens Order, 1953, are prescribed. The form of return by masters of ships with regard to members of their crews who are aliens or were engaged outside the United Kingdom is also prescribed. The particulars required are substantially the same as those required under the repealed S.R. & O. 1920, No. 801, as amended by S.R. & O. 1939, No. 1124.

ALIENS (REGISTRATION CERTIFICATE FEE) ORDER, 1954 (S.I. No. 393): operative April 1, 1954.

This fixes a fee of five shillings for an alien's registration certificate and thus replaces without modification the similarly entitled Regulations of 1952.

ALIENS (EMPLOYMENT) (VISITING FORCES) ORDER, 1954 (S.I. No. 394): operative April 1, 1954.

Members of the armed forces of Belgium, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal and the U.S.A., who are on leave for more than twenty-one days, or absent without leave, or released or discharged from service, must not work for an employer without the permission of the Minister of Labour, or be self-employed for reward without the permission of the Secretary of State. The provisions of the repealed, similarly entitled Order of 1952 are reproduced with some small modifications.

ALIENS (PLACES OF DETENTION) ORDER, 1954 (S.I. No. 395): operative April 1, 1954.

The places in which aliens may be kept when detained for examination on landing, when permission to land has not been given, when registration documents have not been produced, and when a deportation order or recommendation has been made, are prescribed. Detention must not exceed five days unless in prison or, in Scotland, legalised police cells. The corresponding repealed legislation dealt only with detention after a deportation order or recommendation.

ALIENS (FOREIGN REPRESENTATIVES) DIRECTION, 1954 (S.I. No. 396): operative April 1, 1954.

Directions of August 14, 1945, and February 12, 1946, given under the repealed Order of 1920 are replaced with minor modifications. It exempts from certain provisions of the Aliens Order, 1953, consular officers, specified consular employees, their wives and minor children, members of foreign governments visiting the United Kingdom on the business of their government, and certain officers and servants of specified international organisations.

Births and Deaths

See REMOVAL OF BODIES REGULATIONS, 1954, below.

Coroners

REMOVAL OF BODIES REGULATIONS, 1954 (S.I. No. 448): operative May 1, 1954.

The Regulations of 1927 are revoked and superseded, but without prejudice to any rights or liabilities which have already arisen thereunder. The principal change is that where a coroner's order for burial or certificate for cremation has been issued, this must be delivered to a coroner with any notice of intention to remove a person's body from the country, and it should be retained by him unless he is notified in writing that it is intended to cremate the body in Scotland or the Channel Islands. Certain minor amendments are made as a result of the Births and Deaths Registration Act, 1953. The required notices and acknowledgments may now be sent by post.

For penalty for infringements see section 4 of the Births and Deaths Registration Act, 1926.

Emergency Laws

MINISTER OF MATERIALS (RAW MATERIALS) (CHARGES) (REVOCATIONS) ORDER, 1954 (S.I. No. 479): operative April 21.

The Fertilisers (Charges) Orders, 1950–52, and the Leather (Charges) (Nos. 1–4) Orders, 1947–51, which imposed certain charges under control schemes, are revoked.

Food and Drugs

BUTTER ORDER, 1954 (S.I. No. 517): operative April 29, 1954; CHEESE ORDER (S.I. No. 518); FATS AND CHEESE (RATIONING) (REVOCATION) ORDER, 1954 (S.I. No. 545): both operative May 9, 1954.

The price control of butter and cheese has been removed and their rationing has ceased. Butter need no longer be labelled "National Butter."

No one may manufacture any butter, other than farm butter, or any cheese except in accordance with the terms of a licence granted under these Orders. Every person so licensed must keep a record of his production of butter or cheese, together with all books, documents and accounts relating thereto, at his principal place of business.

Butter Order, 1951 (S.I. No. 801), as amended, and the Cheese Order, 1950 (S.I. No. 1069), as amended, are revoked.

For penalties for contravention see Defence (General) Regulations, 1939, reg. 92.

London

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 6 (S.I. No. 426): operative April 22, 1954; No. 7 (S.I. No. 451): operative April 27, 1954.

Prescribed routes are detailed for the Market Place in the borough of Hertford, and Sydney Road in Enfield. Fines not exceeding £5 for a first offence and £10 for a second offence may be imposed for contraventions.

LONDON TRAFFIC (PROHIBITION OF WAITING) (HERTFORD) REGULATIONS, 1954 (S.I. No. 452): operative April 27, 1954.

Waiting is restricted in certain streets in the borough of Hertford. Fines not exceeding £5 may be imposed for contraventions.

Magistrates' Courts

PETTY SESSIONAL DIVISIONS (BERKSHIRE) ORDER, 1954 (S.I. No. 497): fully operative May 1, 1954.

The petty sessional divisions of Moreton and the borough of Wallingford have been reorganised and now form a new division of Moreton and Wallingford. The area of the division of Reading is redefined to include certain parishes before comprised in the division of Forest.

Pest Control

IMPORTATION OF POTATOES FROM PORTUGAL AND SPAIN (GENERAL LICENCE) ORDER, 1954 (S.I. No. 477): operative April 15, 1954.

For a short time during April and May, the requirements of article 5 of the Importation of Plants Order of 1947 (S.I. No. 671) did not apply to new potatoes grown in Spain and Portugal.

IMPORTATION OF PLANTS (AMENDMENT) ORDER, 1954 (S.I. No. 513): operative September 16, 1954.

All living plants or parts of living plants (except seeds), other than potatoes, forest trees and plants whose period of active growth had ceased before June 1, 1954, landed in England or Wales between September 16, 1954, and April 30, 1955, must be accompanied by a certificate of health based on examination of the plants during growth in addition to any other certificate already required.

For penalties for infringement see article 13 of the Importation of Plants Order, 1947.

See also p. 481.

Police

SPECIAL CONSTABLES (PENSIONS) ORDER, 1954 (S.I. No. 484); SPECIAL CONSTABLES (PENSIONS) (SCOTLAND) ORDER, 1954 (S.I. No. 485): both operative April 19, 1954.

The Police Pensions Regulations, 1953 (S.I. No. 1800; see [1954] Crim.L.R. 151), and the Police Pensions (Scotland) Regulations (S.I. No. 1833), which concern the pension to be paid to the widow of a member of the police force killed in the execution of his duty as the result of an attack made upon him, are extended to apply to the pension of the widow of a special constable killed in like circumstances.

The notional average pensionable pay of a special constable ceasing to hold that office after January 13, 1954, is increased where an award calculated on that pay has become payable since April 19, 1954.

Scotland

Pest control

IMPORTATION OF RAW CHERRIES (SCOTLAND) ORDER, 1954 (S.I. No. 504): operative May 1, 1954.

Unless a licence is granted, the importation of raw cherries from certain European countries is forbidden for specified periods between June 1 and September 30 in any year. Other imports of raw cherries must be certified to be free from pest. Officers so authorised by the Secretary of State are given power to examine consignments of cherries.

Fines not exceeding £10 for a first offence and £50 for a subsequent offence may be imposed for infringements of the Order or licences granted under it.

Police

As to the pensions of special constables and the widows of special constables, see p. 480, above.

Wireless Telegraphy

WIRELESS TELEGRAPHY ACT, 1949 (COMMENCEMENT) ORDER, 1954 (S.I. No. 437): operative April 8, 1954; WIRELESS TELEGRAPHY REGULATIONS, 1954, BROADCAST LICENCE CHARGES (S.I. No. 438): operative June 1, 1954; GENERAL LICENCE CHARGES (S.I. No. 439): operative June 1, 1954; WIRELESS TELEGRAPHY (COLONIAL SHIPS AND AIRCRAFT) ORDER, 1954 (S.I. No. 488): operative April 21, 1954.

Sections 5, 6 and 8 of the Wireless Telegraphy Act, 1949, came into operation on April 8. Section 5 concerns the sending by means of wireless telegraphy of misleading messages and the interception and disclosure of messages. Section 6, which states the stations and apparatus to which section 5 applies, has been extended to include stations and apparatus on British ships and aircraft registered in any colony, British protectorate, British protected State or registered under the law of any other territory outside the United Kingdom, which is for the time being administered by H.M. Government.

The Wireless Telegraphy Act, 1949 (Hong Kong Application) Order in Council, 1951 (S.I. No. 1180) has been revoked.

Sections 1–4 and 7 of the Act of 1949 come into operation on June 1, 1954. They concern the licensing of wireless telegraphy, the fees and charges for such licences, experimental licences, the power of the Postmaster-General to make regulations concerning wireless telegraphy, and his powers regarding wireless operators. The fees payable in regard to certain licences are prescribed.

For the penalties for offences committed under these sections, see section 14 of the Act of 1949.

Letters to the Editor

The "Truth Drug"

Sir,

In your Editorial of the May issue of the "Review" I see that you are proposing to include in a future issue an article dealing with *R.* v. *Barker*. I am not quite sure whether I correctly appreciate your comment that *R.* v. *Barker* appears to be the first time that the "truth drug" has been used on someone facing a capital charge. If you are referring to the use of the anaesthetic which is a combination of oxygen and carbon dioxide then I believe *R.* v. *Barker* does mark a milestone in criminal investigation in this country. But if you are referring to "truth drugs" in a more general form I would point out that there has been at least one earlier instance. Dr. Rossiter Lewis, the specialist who conducted the psychiatric investigation in *R.* v. *Barker,* was also called for the defence in *R.* v. *Gordon,* a case of murder tried before Lord MacDermott L.C.J. in Belfast in 1953. In that case sodium pentothal—a member of the barbiturate family which is used constantly for inducing anaesthesia—was used on the accused. Unlike *R.* v. *Barker,* the psychiatrist's findings, which he had obtained in the presence of a responsible prison official, appear to have been accepted in *R.* v. *Gordon* without question.

Yours faithfully,

J. Ll. J. Edwards.
Barrister-at-Law.

The Queen's University of Belfast.

[The article referred to here is included at page 423.—Eds.]

Attendance of Witnesses at Magistrates' Courts

Sir,

I refer you to your editorial comments on the above-mentioned matter, and enclose herewith some notes on certain statutory provisions in the Federation of Malaya which may be of interest to you and your subscribers, of whom I am very glad to be one.

Motor Vehicles (Driving Offences) Proclamation

Any person summoned to answer a charge in respect of any of certain minor traffic offences under the Motor Vehicles (Driving Offences) Proclamation may by letter sent to the court by registered post plead guilty to the charge and submit to the order of the court. The summons must contain a notice informing him of his right to do so. If he does so and is sentenced to imprisonment, the court must forthwith issue a warrant for his apprehension, and the sentence of imprisonment commences to run only after his apprehension under such warrant.

Criminal Procedure Codes

In any case relating to an offence punishable by fine only or by imprisonment not exceeding three months and in which a magistrate has issued a summons, an accused person, desiring to plead guilty and be convicted and sentenced in his absence, may by letter addressed to the magistrate plead guilty and submit to pay any fine which may be imposed in respect of such offence, and the magistrate may thereupon record a plea of guilty and convict him according to law, and may sentence him with or without a sentence of imprisonment in default of payment of such fine. The accused must give in that letter an adequate postal address, and the magistrate must inform him, by letter sent by registered post to that address, of the sentence imposed. The accused must pay the fine imposed within seven days from the day on which the magistrate's letter is delivered at that address in the ordinary course of post.

The magistrate inquiring into or trying the case may in his discretion at any stage of the proceedings direct the personal attendance of the accused, and if necessary enforce his attendance.

A sentence of imprisonment without the option of a fine cannot be pronounced in the absence of the accused. If the magistrate intends to pass such a sentence, he must direct and enforce the personal attendance of the accused. Upon such attendance, if the accused desires to withdraw his plea of guilty and claim trial, and notwithstanding any order of conviction made in his absence, the magistrate must permit him to withdraw that plea and thereupon hear and determine the case, and, if he is convicted, pass sentence according to law.

Yours faithfully,
K. C. Chia,
Advocate and Solicitor, Barrister-at-Law.

Kuala Lumpur.

Pedestrian Crossings

Sir,

Might I be permitted to point out a small error on page 394 of the May issue of the *Criminal Law Review?*

Dealing with the Pedestrian Crossings Regulations, 1954, the writer has stated, amongst other things, under (4) that the regulations do not apply to crossings at which traffic lights are not installed, if the traffic there is normally controlled by the police for periods amounting to at least twenty hours per week. This is incorrect as reference to the definition of uncontrolled crossings in Statutory Instrument No. 370 of 1954, will show that it includes a crossing at which traffic is not for the time being controlled by a police officer in uniform. The part of the regulations which does not apply to crossings periodically controlled by police is Part 2 of the First Schedule.

As far as I can see by the regulations, on July 1, 1954, there will be two types of uncontrolled crossings, (1) marked with zebra stripes, studs and flashing beacons, and (2) when not controlled by police, only marked with studs.

I would like to congratulate the company on producing such an interesting and useful publication.

Yours faithfully,
TERRENCE J. HOWARD,
Inspector of Police.

Bishopsgate Police Station.

Books and Periodicals

Reviews:

Road Traffic Prosecutions. By G. S. Wilkinson, Solicitor. London: Solicitors' Law Stationery Society, Ltd. 1953. xxxvi and 173 and (index) 21 pp. (25s. net.))

From "A," "B" and "C" Licences to Zebra Crossings. These are the alpha and omega of the index in Mr. Wilkinson's excellent book which covers in its 127 pages of text everything that any lawyer or police officer concerned in a motoring case could reasonably require.

The authorities are well set out with a table of cases covering all the major reports. There is a table of statutes in which the title of the statute is fully set out and a table of Rules. The main sections of the 1930, 1933 and 1934 Acts and some of the more important regulations are set out in full in the Appendices.

In general, the law and the authorities relating to all aspects of motoring offences are covered, although the chapter on Special Reasons seems, to my mind, to deal with this very difficult aspect of the law in a somewhat cursory way, and although a practitioner would find that the authorities referred to are a good starting point he would be unwise not to look up the cases for himself. In the chapter dealing with appeals the writer does not make clear that although the clerk to the magistrates draws the special case on an appeal to the Divisional Court, the parties to the appeal should have an opportunity to see the draft case before it is signed; indeed, usually, the appellant submits a draft to the clerk which is thereafter amended or agreed to by the respondent. If the case is finally stated by the clerk in a way which either party considers does not fairly represent the facts, that party may make an application to the Divisional Court supported by an affidavit asking that the case might be sent back to the justices for amendment: *Spicer* v. *Warbey* [1953] 1 All E.R. 284.

I can strongly recommend this book for police officers concerned with the preparing and handling of prosecutions for minor motoring offences. The chapter on Procedure and Evidence is clearly and simply written and the more tricky points on notices of intended prosecution are clarified and explained. A police officer who had read this part of the book would have no excuse if a case brought by him was dismissed for failure to comply with section 21 of the 1930 Act.

The new tests recommended by the British Medical Association for use when examining motorists arrested for being under the influence of drink will presumably replace the old tests set out on page 47. Perhaps the wise reader will keep a summary of these new tests in this book in view of the radical changes that have been suggested.

The need for a comprehensive but easily read book on motoring offences has long been felt and my only criticism of Mr. Wilkinson's volume lies in its title; this book should be read and used by those who defend in motoring cases as well as those who prosecute. To be faced in court with a sudden and unexpected point should no longer be a nightmare if this book is to hand.

MICHAEL HAVERS.

Advocacy, Its Principles and Practice. By R. K. Soonavala, B.A., LL.B. Bombay: N. M. Tripathi, Ltd. 1953. xii and 946 and (index) 11 pp. (£2 10s. net; de luxe edition £2 15s. net.)

Advice on Advocacy in the Lower Courts. Second edition, by F. J. O. Coddington, M.A. Chichester: Justice of the Peace, Ltd. 1954. viii and 34 pp. (no index). (5s. 6d. net.)

A really satisfying treatise on advocacy has yet to be written. Possibly that is the fault of the subject, which yields only very reluctantly to comprehensive treatment, although volumes containing "Hints" or "Advice" of all sizes abound. Mr. Soonavala's volume is large and comprehensive, but it is not a treatise. It contains much useful advice on all aspects of advocacy, and in addition it contains extracts from many earlier works, each fully acknowledged, together with a large selection of extracts from the examination of witnesses in many trials in England, in the United States, and in India. Naturally, opinions may vary upon particular selections, but on the whole these extracts well illustrate the points the author wishes to make, or possibly, on the contrary, the extracts suggest the need for a note upon technique. Moreover, like most other writers upon advocacy, Mr. Soonavala has been unable to resist the temptation to include anecdotes in which counsel, witness or judge has made some unexpected but witty rejoinder, not invariably without prompting. This ample volume will do a good deal to enlighten the young advocate upon the essentials of his craft, though it might with profit have been pruned a little. Moreover, it illustrates very strikingly how closely Indian advocacy is following Anglo-American models.

Mr. Coddington's book is designed to help those who practise before magistrates' courts or the county court, and Sir Norman Birkett in his foreword rightly stresses the value of the practical advice which it gives in pithy form. The greater part of its substance is not unknown to lawyers, for it is, in effect, a revised and enlarged second edition of an earlier book which appeared in 1951, and which was an expansion of a lecture originally delivered to the Bradford Law Students' Society. It contains many references to former members of the North-Eastern Circuit and their methods, which are an interesting addition to the literature of advocacy.

G. W. KEETON.

A Textbook of Forensic Pharmacy. Third edition, by Thomas Dewar, PH.D., Barrister-at-Law. London: Edward Arnold (Publishers), Ltd. 1954. xvi and 278 and (index) 9 pp. (18s. net.)

This volume, first published in 1946, is now an accepted standard work on Forensic Pharmacy and is primarily written for non-legal readers, and in particular pharmacists reading for the examination of the Pharmaceutical Society.

The success of the work is due no doubt to the clear and concise explanations of the ever-increasing Acts and Statutory Instruments now applying to pharmacy.

A feature of the book is the excellent summaries and examples.

This edition takes into account 28 new Statutes or Statutory Instruments which have been issued since the appearance of the second edition in 1950. The author anticipated the coming into operation of the Pharmacy Act, 1953, and also included are the changes necessitated by the publication of the 1953 British Pharmacopoeia.

J. B. FIRTH.

Books Received:

The Chemist and Druggist Poisons Guide. By W. A. Whatmough, B.SC., PH.C., F.R.I.C. London: The Chemist and Druggist. 1953. Volume 1, 89 pp., with Supplement, 8 pp. (20s. net.); Volume 2, ix and 220 and (index) 15 pp., with Addendum, 12 pp. (40s. net.)

A Concise Law Dictionary. Fourth edition. By P. G. Osborn, LL.B., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1954. vii and 399 pp. (17s. 6d. net.)

The Power of Poison. By John Glaister, Professor of Forensic Medicine in the University of Glasgow. London: Christopher Johnson. 1954. 266 and (bibliography) 5 and (index) 1 pp. (18s. net.)

The Fingerprint System at Scotland Yard. By Frederick R. Cherrill, M.B.E. London: Her Majesty's Stationery Office. 1954. 170 and (index) 3 pp. (21s. net.)

The Law in Action. A series of Broadcast Talks. London: Stevens & Sons, Ltd. 1954. vii and 89 pp. (no index). (7s. 6d. net.)

Articles:

Howard Journal, Vol. 9.
- Capital punishment, p. 12.
- Criminal Justice Act of 1948 and the psychiatrist, p. 20.
- Professional social work and the rehabilitation of prisoners, p. 36.
- Police and the community, p. 52.
- Prison education—training for freedom? p. 56.
- Report of the Prison Commissioners for 1952, p. 61.

Police College Magazine, Vol. 3.
- Reform of the criminal law, p. 129.
- Identification of persons by X-ray examination of bone trabeculation, p. 135.
- Helicopters and the police service, p. 171.
- Possible effects of nationalisation (of the police), p. 177.
- Codification of law, p. 180.

Cambridge Law Journal, April, 1954.
- Retirement of clerk with justices, p. 7.
- Discovery in Crown proceedings, p. 11.
- Conspiracy and public mischief, p. 26.
- Furtum and larceny, p. 87.

Law Quarterly Review, Vol. 70.
- Murder and mistake concerning cause of death, p. 146.
- Nervous shock and homicide, p. 168.
- The cab-driver's licence case, p. 203.
- The admissibility of evidence of similar facts, p. 214.

British Journal of Delinquency, Vol. 4.
- American prisons, p. 226.
- A further survey of female delinquents undergoing Borstal training, p. 265.
- Is the criminal amoral? p. 272.

Solicitor, Vol. 21
- Magistrates' Note-book, p. 89.

Magistrate, Vol. 10.
- Proof of previous convictions, p. 102.
- Attendance centre order and compensation, p. 116.

Solicitors' Journal, Vol. 98.
- Drunk in charge, p. 275.

Law Journal, Vol. 104.
- A case of specificatio, p. 296.

Law Times, Vol. 217.
- Expert evidence today, p. 190.
- Pollution by oil, p. 215.

Justice of the Peace, Vol. 118.
- Deaf and dumb (witnesses), p. 228.
- The policeman's warning (cautioning young offenders), p. 229.
- Delinquents anonymous (personal element in crime), p. 259.
- Public mischief, p. 263.
- Adjournment and remand, p. 274.
- Pedestrian crossings, p. 290.

Police Review, Vol. 62.
- Question and answer, p. 260.
- Powers to test brakes of motor-vehicles, p. 296.
- The searching question, pp. 312, 336.
- Pension and conditions of services, p. 312.

Police Chronicle.
- Opening the car door, May 7, 1954, p. 4.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

Post Office frauds

Some three or four years ago, when there was a large number of cases of obtaining money from the Post Office by means of forged withdrawal forms, the Court of Criminal Appeal said that usually the minimum sentence should be three years' imprisonment. There has since been a reduction in the number of these cases, but Lord Goddard C.J. has recently said that three years' imprisonment remains the appropriate sentence. In two recent cases he has stressed this point, saying that he did not want quarter sessions to think that this sentence was no longer necessary.

In *R.* v. *Mitchell* (March 8, 1954) a sentence of 12 months' imprisonment was thought to be lenient but was not altered; the accused had pleaded guilty to two charges and asked for thirteen other offences to be taken into consideration. In *R.* v. *Mewis* (May 17, 1954) as the accused was of Borstal age his sentence of 18 months' imprisonment was not increased; he had been found guilty on two charges.

The team policing mystery

Under this heading "Critic" in the POLICE REVIEW of June 11, examines the "mystery why team policing should be a phenomenal success in Aberdeen, Salford and one or two other forces and a disappointment elsewhere." In the March and April issues of the CRIMINAL LAW REVIEW, Mr. A. J. Paterson, the Chief Constable of Salford, made a detailed statement of the advantages of team policing. "Critic" makes the plea that "some Chief Police Officer would give a detailed statement of the reasons why the system failed in his district. It would then be possible for neutral police officers to draw their own conclusions from the evidence adduced." It is, however, more satisfying to chronicle a success than to document a failure.

Metropolitan magistrates' courts

The Home Secretary is considering, in consultation with the chief magistrate, what can be done to relieve the congestion in some of the Metropolitan magistrates' courts. He is not prepared at present to re-establish the court which existed in Westminster before the war.[1]

Turning a blind eye

A plea that the police were turning a blind eye to the offence was made at Eastbourne Magistrates' Court when a defendant was charged with a breach of the Road Transport Lighting Act, 1927, s. 1 and the 1950 regulations. The defendant had left his van parked at night with one light lit; this "parking light" was on the offside roof of the van about half-way along its length and about five feet from the ground, showing a white light to the front and a red light to the rear. The light was lit by a 3 watt bulb and was invisible from ten yards to the rear. The plea was unsuccessful and a fine of £1 was imposed. The number of vehicles which can be seen fitted with this form of lighting would appear to justify the defendant's idea in this case.

Merchandise marks

Replying to a debate concerning the enforcement of the Merchandise Marks Acts, the Parliamentary Secretary to the Board of Trade sought to correct the common error of supposing that it is invariably the duty of the Board of Trade to prosecute if there has been a breach of these statutes. Other persons may do so and many prosecutions are in fact conducted by trade associations and the Retail Trading

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[1] H.C. Debates, Vol. 527, col. *143*, May 20, 1954.

Standards Association. Mr. Strauss also pointed out that it is necessary to prove every element of an offence under the Acts and not merely that the trade description applied to the goods is false.[2]

Prisoners

Various provisions concerning the employment of preventive detention prisoners on their release on licence and their admission to the third stage of sentence have been described by Sir Hugh Lucas-Tooth. As an experiment a small number of prisoners in the third stage of sentence are being allowed to undertake outside employment.[3]

Replying to a debate on the medical treatment of prisoners, Sir Hugh reviewed the arrangements for their care. Although there is a deficiency of medical officers and a certain danger in the present overcrowding, the general standard of health is good.[4]

Metropolitan police

The Home Secretary has outlined the new procedure now followed concerning the Metropolitan police estimates. He also spoke of recruitment, the improvement in conditions of service, police housing, special constables and the Police Council, when the estimates were considered in the House of Commons.[5]

Police widows' pensions

Although the Home Secretary recognises the hardship caused to widows of policemen who died before 1948, he is not prepared to raise their pensions to the same level as those received by persons widowed after that date. As in all occupational schemes, the rate of pension is determined by the scheme as it stood when the pension started. A special exception cannot be made for pre-1948 police widows so that they may beneft by the National Insurance scheme brought into operation in 1948.[6]

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[2] H.C. Debates, Vol. 527, col. 646 *et seq.*, May 6, 1954.

[3] H.C. Debates, Vol. 527, col. 1428, May 13, 1954.

[4] H.C. Debates, Vol. 527, col. 2455 *et seq.*, May 20, 1954.

[5] H.C. Debates, Vol. 527, col. 586 *et seq.*, May 6, 1954.

[6] H.C. Debates, Vol. 527, col. 542 *et seq.*, May 5, 1954.

Written notice of summary charges

The Home Office has now sent a Circular, No. 98/1954, to Chief Constables giving them some guidance on the procedure which should be followed when a person is charged with a summary offence, otherwise than by summons served upon him (see [1954] Crim.L.R. 405). It is suggested that the written notice which should then be served on the accused should contain a statement on the lines of the caution usually given orally to the accused and if the police afterwards decide to make an additional charge or to alter the charge, they should give the accused written notice of this.

Pedestrian crossings

A motion to annul the Pedestrian Crossings Regulations, 1954 (S.I. No. 370; see [1954] Crim.L.R. 394) was defeated in the House of Commons.[7]

Judicial appointments

Mr. Reginald Charles Vaughan, O.B.E., M.C., Q.C., has been appointed Recorder of the City of Birmingham and Mr. Peter Stanley Price, Recorder of the Borough of Pontefract.

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[7] H.C. Debates, Vol. 527, col. 2043 *et seq.*, May 18, 1954.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

The Criminal Responsibility of Children

By Glanville L. Williams, LL.D.(Cantab)
Barrister-at-Law, Quain Professor of Jurisprudence in the University of London

One of the matters that frequently worry juvenile courts is the criminal responsibility of children between the ages of eight and fourteen years. The law itself is stated in a confusing variety of ways, and there is considerable uncertainty as to the burden of proof.

The mental state required of a child

The confusion of doctrine is illustrated by the treatment of the subject in Kenny's *Outlines of Criminal Law*, ed. Turner, p. 66. This first states that a child between eight and fourteen years of age is rebuttably presumed to be *doli incapax*. The Latin phrase points to a requirement of showing fraud or intention. But Kenny then speaks as though the issue is one of the child's "guilty mind," which is treated as being synonymous with "mischievous discretion." The test for this is stated to be: "Had he a guilty knowledge that he was doing wrong?" The text then states the requirement in terms of proof of "a wicked mind," and a case of 1629 is quoted in which a boy of eight was hanged for burning two barns, "it appearing that he had malice, revenge, craft and cunning." This plethora of mental states hardly helps the discussion, for it is possible for a lad to act out of malice, revenge, craft and cunning without knowing that his act is wrong. He may think that a crafty revenge for insult is honourable and right.

The truth is that the law has undergone a slow process of clarification, and the old authorities should therefore disappear from the books. The test upon which the more recent cases uniformly insist is: Did he know the act was wrong? See *Owen* (1830) 4 C. & P. 236; *Manley* (1844) 1 Cox 104; *Smith* (1845) 9 J.P. 682. According to one case the child must know that it was not merely wrong but "gravely wrong, seriously wrong": *Gorrie* (1918) 83 J.P. 136 (a charge of

manslaughter). In addition, the ordinary *mens rea* required for the crime must of course be brought home to the child.

Does the requirement of knowledge of wrong refer to legal wrong or moral wrong? Or is it the rule that the child may be convicted if he knew that his act belonged to either class of wrong? This much, at least, is certain, that the child's realisation that he is committing a legal wrong—something that will attract the attention of the policeman—is sufficient. Whether a mere knowledge of moral wrongness is sufficient is unsettled. In the somewhat similar rule for insanity, the Court of Criminal Appeal has now settled that "wrong" means exclusively legal wrong, because the court cannot go into questions of morals (*Windle* [1952] 2 Q.B. 826). Yet the rule in *Gorrie* seems to refer to moral wrong, for although a child may be able to distinguish between slight and grave degrees of moral wrong, he can hardly be expected to distinguish between slight and grave degrees of legal wrong. He knows nothing of the classification of crimes and punishments: the most he knows of the law is whether the policeman will or will not take him to court for it. Thus the test of knowledge of "grave wrong" is necessarily a moral test. Conceivably it is a moral test operating within the legal test: the child must know both that his act will attract the attention of the policeman and that it is a grave moral wrong.

Obsolete character of the test

The test of knowledge of wrong is bound up with retributive punishment and the mystical theory of moral responsibility. According to the theory of moral responsibility, the only persons capable of acting wrongly are those of a certain intelligence or intellectual accomplishment. A lunatic has no moral responsibility, and neither has a very young child. This involves defining insanity and youth for the purpose of responsibility, and somewhat arbitrary lines have to be drawn. The retributive theory of punishment imports the doctrine of moral responsibility into the law, because no one can justly be punished unless he is morally responsible. If an ordinary person commits a wrong, he deserves to be punished; but it is not just to punish young children and those of unsound mind. In the case of children, the law recognises a twilight zone between eight and fourteen in which they are morally responsible not as a class, but as individuals, when they know their act to be wrong. Only then do they morally deserve punishment, and so only then can they be punished.

This language of moral responsibility is one that most of us habitually use, and perhaps it is socially desirable that we should think like this. Yet the notion of moral responsibility is incredulously received by many scientists and philosophers. The scientist may say that moral responsibility is not an objective fact; it is not something capable of being ascertained by experiment. The philosophical determinist will say that no one is morally responsible, because no one can help doing what he does. The utilitarian will say that the notion of a mystical nexus between wrong and suffering is an error, and that the only justification for punishment is deterrence or social necessity.

These are minority opinions, and the "common-sense" view of moral responsibility and retributive punishment is still widely maintained in respect of the sane adult who commits a crime. Yet in respect of children it is just as generally abandoned. No one whose opinion is worth considering now believes that a child who does wrong ought as a matter of moral necessity to expiate his wrong by suffering. Punishment may sometimes be the best treatment, but if so it is because this is the only way in which the particular child can be made to see the error of his ways. The guiding principle is now expressed in section 44 (1) of the Children and Young Persons Act, 1933: "Every court in dealing with a child or young person who is brought before it . . . shall have regard to the welfare of the child or young person. . . ." Merely retributive punishment is ruled out.

In this climate of opinion, the "knowledge of wrong" test no longer makes sense. The test is not needed to enable a child to escape punishment, because comparatively few wayward children are now officially punished. For his first offence a child may be fined or ordered to be detained, but is more likely to be admonished or placed on probation; for a second or subsequent offence, if it is desired to make use of the very restricted forms of punishment available to a juvenile court, it will generally be easy to show that the child knew his act to be illegal. Thus at the present day the "knowledge of wrong test" stands in the way not of punishment, but of educational treatment. It saves the child not from prison, transportation, or the gallows, but from the probation officer, the foster-parent, or the approved school. The paradoxical result is that, the more warped the child's moral standards, the safer he is from the correctional treatment of the criminal law.

It is perhaps just possible to argue that the test should now be regarded as even legally obsolete. The test was designed to restrict the punishment of children and should not be used where no question of punishment arises. This argument has to face the difficulty that the test traditionally protects the child from conviction, whereas the choice between punishment and other treatment is only made after conviction. In the adult court, conviction is for the jury, whereas prescription of treatment is for the judge. It is therefore impossible to make the question of conviction depend on the choice of treatment.

This difficulty is not so serious in juvenile courts, which have no jury and no conviction, but only a " finding of guilt." It would be a practicable rule, and one consistent with the policy of the new legislation, to say that juvenile court magistrates may find a child's guilt although he is not shown to have known his conduct to be wrong, if the sole purpose is to impose reformative treatment. There is, at least, no High Court authority against this view. So far as I know, the " knowledge of wrong " test has never been expressly laid down for juvenile courts, nor has the possible effect of the Children and Young Persons Act upon this test been considered. Some juvenile courts are, indeed, said to ignore the test, while others are said to apply it, with results generally regarded as unfortunate. Some one should state a case so that the present law can be clarified, and, if necessary, amending legislation introduced. There is, at least, substantial hope that a Divisional Court might discountenance the ruling in *Gorrie*, which goes beyond the previous authorities in requiring knowledge not merely of wrong, but of grave wrong. This requirement is the result of the punishment mentality, and accords ill with the needs of a juvenile court. It seems absurd to say that a child who indulges in a series of annoying peccadilloes can set the magistrates at defiance, for the reason that none of his acts is gravely wrong. The ruling in *Gorrie* is really inconsistent with *Windle* in bringing a moral test into the law. Take the members of the juvenile gangs in Liverpool described by Mr. J. B. Mays: they think it abhorrent to steal from friends, but brave and clever to steal from shopkeepers (3 *British Journal of Delinquency*, at pp. 10-11). Thus even though they know that stealing from shopkeepers is unlawful, they can hardly be said to know that it is gravely wrong. The test is a wholly unrealistic fetter upon the functioning of a juvenile court.

The use of guardianship proceedings

Where criminal proceedings against a child fail (or are likely to fail) on account of the " knowledge of wrong " test, the child may be brought before the court on the civil side as " in need of care or protection " or " beyond control." The outcome of these proceedings (which may be compendiously referred to as " guardianship proceedings ") is substantially the same as that of criminal proceedings except that punishment is not possible. Obviously it is most undesirable that a child should be subjected to two different court proceedings in respect of the same conduct, and there is crying need for legislation permitting a court which acquits of crime to make a " care or protection " order if the facts show that the legal foundation for such an order exists.

The jurisdiction in guardianship should also be widened, by allowing an order to be made wherever the juvenile has committed what in the case of an adult would be a crime. Under the present law, the commission of crime may show that the juvenile is falling into bad associations, or exposed to moral danger, or beyond control, but it does not necessarily satisfy the other requirement under section 61 (1) (a) of the Act of 1933, namely, that the juvenile should have no fit parent or guardian, or no parent or guardian exercising proper care and guardianship. The effect of the Act was illustrated in *Bowers* v. *Smith* [1953] 1 W.L.R. 297, where three boys under seventeen committed indecency with a girl against her will. This was evidently a crime, but instead of criminal proceedings the boys were brought before the court as in need of care or protection. It was held by the Divisional Court that no order could be made, because the parents did not know of the indecency, and had not failed to exercise proper care. The effect of the decision is that in a case of this sort the court has to direct its attention to the propriety of the parents' conduct instead of considering what is best for the juvenile. The attitude is that a guardianship order, although needed for the boy, cannot be made because it would be an unjust reflection on his parents. Yet had the lads been charged with crime, they could have been treated in substantially the same way as under a guardianship order. Quite obviously the distinction between criminal and guardianship proceedings is nconveniently technical. I should like at this point to express my indebtedness to Mr. John Watson for calling my attention to the anomaly, and to refer to his forthcoming book on the subject for a further discussion.

The burden of proof concerning knowledge of wrong

Another matter on which the guidance of the Divisional Court should be sought is the burden of proof relating to the child's knowledge of wrong. The usual statement of the law is that there is a rebuttable presumption that the child over eight is *doli incapax*, and it is for the prosecution to prove that the child knew that what he was doing was wrong. Some magistrates interpret this rule so strictly that if the prosecution gives no evidence of this knowledge, they find that there is no case to answer. Now if the police have not interrogated the child before trial, to obtain an admission from him, they may be wholly without evidence of the child's knowledge. The effect of this interpretation of the law is therefore to encourage the preliminary questioning of wrongdoing children by the police. Otherwise the case may break down although the child is ready to admit his guilty knowledge, for it may be impossible to reach a stage in the case at which the child can be examined.

As a matter of policy it is highly desirable that a child who has committed what, for an adult, would be a crime, should be put to answer, even if he is afterwards acquitted on the ground that he did not know his act to be wrong. This desirable result can be reached by drawing a distinction between the burden of proof (or persuasive burden) and the burden of introducing evidence (evidential burden). The burden of proving the child's knowledge of wrong is on the prosecution, but this only means that, when *all* the evidence is in, the prosecution must fail if the court is not satisfied beyond reasonable doubt of the child's guilt. The fact that the persuasive burden is on the prosecution does not control the burden of introducing evidence on particular issues, for the law may place an evidential burden on the accused even when the persuasive burden is on the prosecution. Where the evidential burden of an issue is on the accused, all that the prosecution has to do to make out a *prima facie* case (and so to repel a submission of "no case") is to give evidence of the other issues the evidential burden of which is on them. The accused is then put to give some evidence in answer.

This means, if the rule applies to the situation under discussion, that the child must adduce evidence that he did not know his act to be wrong. If he gives evidence himself, he can be cross-examined, and this cross-examination may supply the evidence that the prosecution needs.

An analogy may be taken from the ordinary criminal law relating to adults. A man throws a stone and breaks a window. The burden of proof of *mens rea*—the persuasive burden—is on the prosecution. But there is an evidential presumption that a man intends the probable consequences of his acts, and the evidential burden of showing that it was an accident is on the accused. If he gives no evidence, he can be convicted. If he gives some reasonable evidence that it was an accident, then he must be acquitted unless on the evidence as a whole the tribunal is satisfied beyond reasonable doubt that he had the requisite intent.

So also where, on a charge of receiving, the prosecution shows that the accused was in possession of stolen goods recently after the theft. The persuasive burden of proving knowledge that the goods were stolen is on the prosecution, but the evidential burden of disproving it—giving some reasonable evidence to indicate that he did not know—is on the accused.

With one exception immediately to be discussed, there is no authority either way concluding the specific question here considered—whether the evidential burden in respect of knowledge of wrong is on the child. But the absurd and impracticable consequences of the opposite view suggest the opinion that it is on the child. The only consequence of placing the evidential burden on the child is that the child is compelled to give some evidence on the subject, which in practice subjects him to cross-examination. Since the fact is peculiarly within the child's knowledge, it is reasonable that the evidential burden should be on him. There are objections to laying it down as a general proposition of the law of evidence that the evidential burden is on the accused if the fact is peculiarly within his knowledge, but in this application the rule is reasonable.

The only decision which causes any real difficulty is *Kershaw* (1902) 18 T.L.R. 357. There the judge ruled that "the commission of a crime was in itself no evidence whatever of the guilty state of mind which is essential before a child can be condemned." However, this was only a direction to

a jury, not an appellate pronouncement, and the judge did not consider the distinction between the persuasive and the evidential burden. Moreover, no reasons or authority were given.

A Scottish Survey

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The Majority Verdict

The case of Ronald Chesney

In the year 1927 John Donald Merrett was tried before the High Court of Justiciary in Edinburgh on charges (first) of murdering his mother and (secondly) of uttering forged cheques upon her bank account. The charge of murder was found " Not Proven " by a majority of ten to five—the minority of five having voted for a verdict of " Guilty "; on the charge of uttering, the pannel (*i.e.*, the accused) was found " Guilty " by a unanimous vote. The late William Roughead, writing of this trial (*Notable British Trials Series*) regarded it as one of the three outstanding Scottish murder trials of his generation, ranking with the Ardlamont case and with the trial of Oscar Slater. In his Introduction, Roughead commented caustically on the " Not Proven " verdict (which in Merrett's case had been supported mainly by the women on the jury, of whom there were six) and made little effort to conceal his personal opinion that Merrett had been " fortunate " both in the conduct and in the result of his trial. The prosecution, which was conducted with notable moderation by the Lord Advocate (Rt. Hon. William Watson, later Lord Thankerton) had been seriously handicapped by the inept handling of the case in its early stages by the police, who had at first accepted Merrett's account that his mother had attempted to kill herself. Mr. Craigie Aitchison (later Lord Justice-Clerk Aitchison), probably the outstanding criminal lawyer of this century in Scotland, gained a favourable verdict on the charge of murder, which was, in blunt terms, a personal triumph. He did not call the accused to give evidence and anticipated unfavourable conjecture on this point by thanking

God that " there are people who would rather go to their death with their lips sealed than that they should speak a single word that would reflect on the name of a mother." In his peroration, counsel assured the jury that, if their verdict was favourable, the accused would never dishonour that verdict.

Mr. Aitchison's prediction has unfortunately not been justified by Merrett's subsequent history. He was imprisoned on several occasions, and supported himself by a variety of dishonest activities, including smuggling and black market dealings.

On March 24, 1954 (*Times*, March 25, 1954), a jury directed by Mr. H. G. Broadbridge, the West Middlesex Coroner, found Ronald John Chesney (formerly John Donald Merrett) guilty of the murder of his wife and mother-in-law some weeks earlier. Chesney (or Merrett) had by the date of the inquest died by his own hand in Germany. There seems to be little doubt that Roughead's doubts regarding the result of Merrett's trial in 1927 were not unfounded, and that two women forfeited their lives as part of the price which society pays for maintaining safeguards against conviction in the absence of convincing proof. In the light of what is known in 1954, a reconsideration of Merrett's trial in 1927 stimulates thought on the problem whether verdicts should be unanimous or by a majority; on the verdict of " Not Proven "; and on the question whether the present rules, which permit a pannel (at his trial) to speak or be silent as he chooses, are altogether satisfactory.

In Merrett's case none of the jury considered the pannel to be " Not Guilty." By a two-thirds majority the charge of murder against him was found " Not Proven." The Scottish jury of fifteen (which, unlike the civil jury, is of great antiquity) may always return a verdict by a majority, and this system operates well in practice. In human affairs unanimity is seldom encountered. In England, where only a unanimous verdict may be accepted, one or two jurors may by obstinacy, obtuseness or unwillingness to accept responsibility, frustrate the sounder judgment or principles of the majority. Moreover, if the English jury fail to reach agreement, the accused has to be tried a second time by a different jury. When the charge and evidence have been of a sensational character and have been widely publicised—as in certain recent trials—it must be no easy matter for the second jury to discharge their duties with complete impartiality. Of the English rule, Sir Gerald Dodson is reported to have observed recently at the Old Bailey (October 9, 1953): "Under our law it is possible for one juryman to make a trial abortive. Perhaps one day our legislature may see fit to decide that a majority of, say, ten-twelfths, may be valid. That would remove perhaps one, possibly two individuals who cannot be made to agree to bring in a verdict one way or the other." The learned Recorder, like the framers of certain Continental criminal codes, would not apparently have been satisfied with a verdict by a bare majority such as has been competent in Scotland from very ancient times. In fact the majority in favour of a particular verdict is not disclosed officially in Scottish procedure: the Justiciary Clerk simply asks whether the verdict is unanimous or by a majority. Retrial is accordingly avoided even in the case of a bare majority. Conviction by 8 : 7 has been known—even in a murder trial (*e.g.*, *Milne* (1863) 4 Irv. 301, where the majority finding disregarded Lord Justice-Clerk Inglis's charge in favour of a verdict of insanity. The accused was later reprieved), but such a verdict must have been returned very seldom. The fact that such a verdict is competent—though in practice extremely rare—seems less prejudicial to the fair administration of justice than the risks incidental to retrial which are the consequences of restricting the power to return a conclusive verdict to cases where the jury is unanimous or has reached its decision by a prescribed majority.

The verdict of "Not Proven"

Roughead's condemnation of the verdict of "Not Proven" "—that indefensible and invidious finding—" is clearly based on the view that it offers to the jury a means to escape the responsibility implicit in a verdict of "Guilty." There are, of course, cases where such a criticism would be apt, but, with respect to the memory of Mr. Roughead, Merrett's trial in 1927 is not necessarily one of them. The very experienced presiding judge, Lord Alness, then Lord Justice-Clerk, in his charge to the jury clearly considered that the inference of guilt was much stronger on the charge of uttering than on that of murder which, as he observed, had been brought as an "afterthought." Moreover, one of the key Crown witnesses, Mrs. Sutherland, had varied her story in several material particulars which cannot be reconciled; the police had mishandled badly the original investigation; the medical evidence conflicted; and the jury had not the advantage of an explanation from the accused regarding the precise circumstances of his mother's death, as to which only he could speak at first hand. In short, though the evidence for the Crown might well have justified "*l'intime conviction*" of the accused's guilt, guilt was not *proved* beyond all reasonable doubt.

In such cases it is thought a verdict of "Not Proven" is appropriate, and, as Sir Compton Mackenzie has suggested ("Sidelight"—*Spectator*, November 27, 1953) it may be desirable that a jury should express doubt regarding the innocence of the accused. The view—which is somewhat prevalent in England—that the "Not Proven" verdict reflects unfairly on a person who has been acquitted, is seldom if ever justified today. Indeed, the history of the verdict of "Not Proven" shows an interesting change in the use of the verdict. In early Scottish criminal procedure verdicts only of "Guilty" or "Not Guilty" were returned, though the terminology varied. It appears, however, that, during the second half of the seventeenth century, some judges by their interlocutors tended to restrict the function of the jury to deciding whether or not certain facts were proved, and then themselves declared the legal conclusions to be drawn from the facts found proven or not proven. In certain cases the judges held an accused to be guilty in law, where the jury had found particular facts not to be proved by the Crown, and where, had a general verdict been returned, the jury would have wished to acquit. (See Hume ii. 440, and Arnott, *Criminal Trials*, esp. pp. 178 *et seq*., 190–1.) In modern times verdicts of "Not Proven" have been returned by juries in circumstances where an English jury would probably convict and such a verdict is particularly appropriate where corroboration of the prosecution's case is lacking. Corroboration of the essential elements in the Crown case is the general rule in Scottish criminal law, and is not—as in England—confined to proof of certain crimes. The verdicts of "Not Proven" in the trials of Monson and of Madeleine Smith were, it is thought, preferable to findings of "Not Guilty." In *McArthur* v. *Grosset*, 1952 J.C. 12; 1952 S.L.T. 88, which was a case where an appeal was taken from a verdict of "Not Proven" on a summary complaint, the High Court of Justiciary substituted a verdict of "Not Guilty," but gave little encouragement to others who might wish to appeal against the form of their acquittal.

Police Questioning

The Criminal Evidence Act, 1898, which applies to Scotland and England, made the accused a competent but not a compellable witness in his own defence at the trial. His failure to give evidence may not be commented upon by the prosecution, though the judge has a discretion as to whether he should draw the attention of the jury to the unwillingness of an accused to give his account of the circumstances of the alleged crime. It is the view of many with extensive experience of criminal practice that juries are somewhat reluctant to convict unless they have heard some explanation from the accused himself, and it may be questioned whether the 1898 Act has reached a satisfactory solution. An indirect result of the Act in Scotland has been that since 1908 the private judicial examination of an accused after arrest in the presence of a magistrate has—except in exceptional cases—become a formality, since the accused is now entitled to refuse to emit a declaration (Summary Jurisdiction (Scotland) Act, 1908, s. 77 (1)). Formerly he could be questioned. His replies—and his refusal to answer particular questions—were noted, and were read to the jury at the trial. It might be desirable to provide for some form of compulsory judicial examination of the accused either at trial or prior to trial—with, of course, the right to decline to answer particular questions which might tend to incriminate the accused. The present system too often operates as an encouragement to perjury, or, if the accused declines to testify, handicaps the jury in their endeavours to reach a just verdict. Moreover, it provides a motive at least for the police to carry as far as possible the questioning of a possible culprit before arrest—whereafter he may decline to assist the inquiry any further.

In *Chalmers*, 1954 S.L.T. (Notes) 26, a Full Bench of the High Court of Justiciary reviewed the law on questioning by the police, but concluded with regret that in borderline cases so much turns on exact circumstances that the laying down of detailed rules applicable to all cases was impracticable. From the opinions of the Lord Justice-General and the Lord Justice-Clerk, however, certain general propositions may be stated. At the stage of initial investigation the police may question whom they please with a view to acquiring information which may lead to the detection of the person guilty of the crime. After a person has been arrested and charged, the police are to all intents and purposes *functi* and "it is even elementary that all interrogation by the police must cease."[1]

At the stage when suspicion has become centred on a particular individual as the likely perpetrator of the crime under investigation, but no arrest has been made, further questioning by the police becomes dangerous from the viewpoint of admissibility of evidence. If police interrogation is carried too far, as by eliciting a confession by cross-examination or by methods in the nature of bullying, such a confession would almost certainly be excluded by the trial judge. It is not the function of the police to strive for confessions and excess of zeal in this respect cannot be cured by any number of cautions. Once an individual has come under serious consideration as a likely perpetrator of crime only his voluntary and spontaneous statement is admissible, though questions may reasonably be asked to clarify details in the statement. There is no difference in principle between inculpation by conduct and inculpation by words. " Actings " may be indistinguishable from statements made by the suspect by word of mouth or in writing; and if such " actings " are the result of improper interrogation, evidence of them may be excluded. The Lord Justice-General also criticised the practices which had developed of police officers " asking " individuals to accompany them to the police station for questioning and of " detaining on suspicion." Except in cases of persons caught more or less redhanded and arrested without warrant, his Lordship pointed out, no person can be lawfully detained in Scotland unless he has first been charged and at that stage police questioning must stop.

Applying these principles to the facts, the High Court quashed the conviction of Chalmers on a charge of murder. It appeared that the accused, a boy of sixteen, while under suspicion of the crime, and cautioned but not charged, had been interrogated by police officers at a police station. He had made a statement. Thereafter he was further interrogated, and eventually led the police to a cornfield where he pointed out a particular place at which the police had found the purse of the murdered man. It was held that evidence of the contents of the statements made by the accused had properly been excluded; but that evidence of the " actings " of the accused in pointing out the place in the cornfield had been improperly admitted. His actings were closely linked with the interrogation, and subject to the same objection as verbal statements made in response to improper questioning.

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[1] This may be compared with the position in England under the Judges Rules. If the suspect in Scotland wishes to make a statement he should be brought before a magistrate in chambers (*Stark & Smith*, 1938 J.C. 170; 1938 S.L.T. 516; *Wade* v. *Robertson*, 1948 J.C. 117; 1948 S.L.T. 491). This is, of course, to be construed in the sense that evidence cannot be given of what a person under arrest states in answer to police questioning; if the police desire to elicit information for their *own* purposes they are not necessarily precluded from asking for it.

It may be noted that the accused—as is his statutory privilege—did not emit a declaration at his judicial examination, nor did he give evidence on his own behalf at the trial. While welcoming the decision in *Chalmers* as a check upon over-zealous questioning by the police, it may be suggested that the temptation to resort to such questioning would be much diminished if a system of compulsory judicial examination were in operation.

Pre-Trial Publicity and the " Conspiracy Trial "

It is a leading principle of Scottish criminal justice that accused persons are entitled to protection from prejudicial comment and publicity while they are awaiting trial. One aspect of this principle is that in Scottish pre-trial procedure no disclosure is made to the general public of the evidence against an accused person, and it is thought that only in this way can an impartial jury be secured.

In *Macalister and Others* v. *Associated Newspapers, Ltd.*, 1954 S.L.T. 14, the High Court of Justiciary reaffirmed another aspect of the same principle. The *Scottish Daily Mail* published on October 29, 1953, an article reporting the arrest of four men and the charges against them, which included conspiracy to further by criminal means the purposes of the Scottish Republican Army and possession of explosives and firearms. On the following day the paper published a further article headed " Scots Linked with Terror Plot, Police Ready to Pounce," and after discussing the alleged aims and methods of the S.R.A., the article concluded with the alleged statement of a police official, " The S.R.A. has guns and ammunition. They are a definite danger and menace. We are watching every move they make and when the time is suitable we will move." The accused complained of the apparent connection between the articles, and petitioned the High Court of Justiciary to restrain the *Scottish Daily Mail* from such further comment on the subject-matter of the indictment as was likely to prejudice the accused or prevent them from receiving a fair trial. Prohibition was granted. The Lord Justice-General observed: " Once a person has been apprehended and committed for trial, the function of the Press in commenting upon the guilt of the accused and the nature of the offence charged is, at least for the time being, at an end; and the public dissemination thereafter of insinuations or suggestions capable of prejudicing the public mind and the minds of prospective jurors with regard to a pending prosecution cannot be tolerated, for it is in our view prejudicial to the interests of justice."

The eventual trial of Mr. Macalister and his associates—popularly known as " The Conspiracy Trial," attracted considerable public interest, adverse criticism of police methods, and some measure of sympathy for the accused who were acquitted on the main charge but convicted on a lesser charge. No important questions of law were involved, but the case provided a focus for very different opinions on certain Scottish problems.

The " Skean Dhu "

Comparable considerations, no doubt, explain the somewhat surprising general interest taken in the case of *George Green*. One of the most contemptible and oppressive measures ever to have found a place on the Statute-book was the Act 19 Geo. 2, c. 39, which by section 17 abolished and proscribed the Highland dress—an Act which was enforced by rigorous legal, military and religious sanctions. Dr. Johnson in 1773, when visiting Scotland, condemned the statute in scathing terms, and this section was repealed in 1782 by the Act 22 Geo. 3, c. 63. Nevertheless, the resentment to which the proscription gave rise has survived to some extent to the present day. The seeds of discord sown by persecution on racial or national grounds may spring up when and where they are least expected. At Aberdeen Sheriff Court on March 13, 1954, Green was convicted on charges of breach of the peace, assault by pointing a " skean dhu " [*sic*] at two police constables, and also—which has led to some uneasiness—on a charge of contravening the Prevention of Crime Act, 1953, s. 1, in that, without lawful authority or reasonable excuse, he had with him in a public place a " skean dhu." The *sgian dhubh* (black knife), it may be explained, is a small dagger normally worn in the right stocking as part of the Highland dress; and, though it has practical uses, at the present time is carried also as an ornament. An analogous case might be the wearing of a dress sword with Court dress. As a result of Green's conviction on the statutory charge, Lord Saltoun, on March 30, in the House of Lords, asked the Government if they had noted the case "where a man under the Prevention of Crime Act, after being punished for threatening to use a skean dhu, was punished in addition for carrying it; and having regard to the fact that a skean dhu is carried openly, and also to the assurances given by Her Majesty's Government when the second reading of the Bill was debated, whether they propose to take any step to assure the people of Scotland that a customary native dress is not to be proscribed, as in the years after 1745. . . ." The Minister of State in reply intimated that the Lord Advocate was taking steps to ensure that, if a similar case arose again, the statutory charge would not be included against the offender; and no departure was intended from the assurances hitherto given with regard to the wearing of the *sgian dhubh* as part of the Highland dress. In view of the Lord Advocate's directions, the soundness of Green's conviction seems somewhat academic and, indeed, it is not very clear why the statutory charge was ever brought since the common law covered the conduct complained of by the prosecutor. It may be noted, however, that the accused pled guilty, and therefore presumably the Sheriff heard no argument on the law. It may be that Green was wearing Highland dress when he committed the offences charged, and it may be that he had been wearing his *sgian dhubh* in its normal ornamental position in the stocking, but no such defence was raised. Had it been, the accused might have been held to have had "a reasonable excuse" for having the weapon with him in a public place (see *R.* v. *Jura* [1954] Crim.L.R. 378) but probably not if it had been produced from the belt or an inside pocket or indeed carried in the hand. Each case must be decided on its particular facts. The learned Sheriff, Sam McDonald, C.M.G., D.S.O., LL.D., refused the Procurator-Fiscal's application under section 1 (2) of the Act to forfeit the *sgian dhubh*. He remarked that it was part of the Highland dress, and exercised his discretion in favour of the accused. The *sgian dhubh* has, of course, served more purposes than personal ornament in the history of Clan Donald, and also in the histories of Clan MacLeod and Clan MacNeill—clans of the Procurator-Fiscal in Aberdeen and his Depute who prosecuted.

Mental Deficiency

The law of Scotland as to the effect of insanity and mental abnormality upon criminal responsibility differs substantially from the law of England in particular in that a Scottish court is not bound by the McNaghten Rules. The Report of the Royal Commission on Capital Punishment (Cmd. 8932/1953, fully discussed from the Scottish viewpoint 1953 S.L.T.(News.) 197) and the evidence given to the Commission contains an admirable summary of this chapter of the law, despite a most surprising misstatement of the law of Scotland regarding "diminished responsibility." This doctrine is not confined as the Report (§ 413) assumes, to cases of murder. One of the recommendations made by the Commission was that no distinction should be taken between mental deficiency and insanity as a defence (*Recommendation No.* 21, p. 276). It was also noted that under the Criminal Justice (Scotland) Act, 1949, s. 24 (2) a Scottish court (High Court or Sheriff) is empowered—after conviction—even on a capital charge to order the removal of the prisoner to an institution for mental defectives. The attitude of the accused to this procedure in *McIlvenna* (High Court of Justiciary, April 14, 1954, reported *Scotsman*, April 15, 1954) is of general interest in considering the relationship between punishment and treatment. The accused had pleaded guilty to culpable homicide of another man whom, he told the police, he had strangled with a leather belt while the other was comatose. When the prisoner was brought before the court for sentence, the Advocate-Depute asked leave to lead medical evidence with a view to asking for an order under section 24 (2) for the detention of the prisoner in an institution for mental defectives. Three expert medical witnesses were called who testified to the effect that the accused, who had been thirteen times in Barlinnie Prison, had the mental age of a child of twelve years, showed no shame or remorse for the crime which he admitted having committed, and was a feeble-minded person in the sense of the Mental Deficiency Acts. The medical witnesses were, however, cross-examined by counsel for the defence, who endeavoured unsuccessfully to impugn their testimony regarding the mental state of the prisoner. Lord Patrick, the presiding judge, asked the advocate for the accused whether his client realised that, if an order was not pronounced dealing with him as a mental defective, he would get a heavy prison sentence. Counsel replied that his client would rather serve a sentence than bear "the stigma" of treatment as a mental defective. After considering the evidence the judge had no hesitation in pronouncing an order for the detention of the accused in the State Institution at Carstairs. There have been cases in the past where the accused has urged that he should be allowed to plead "Not Guilty" to the charges against him, and that he should not be dealt with as unfit to plead (*e.g.*, *Brown*, 5 Adam 312, and *Wilson*, 1942 J.C. 75; 1942 S.L.T. 194). It may well be unprecedented, however, for a man—after pleading guilty to a serious charge—to contend that he should be dealt with as a criminal rather than as a defective.

Aspects of Forensic Science

By Wilson R. Harrison, M.SC., PH.D.
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Handwriting

In spite of the fact that practically every native-born citizen of these islands is taught the same style of handwriting—known as Civil Service or semi-upright handwriting—from printed copy-books which differ very little in the design of the letters they illustrate, most people are acquainted with certain outstanding and highly individual handwritings which can be recognised at a glance and concerning whose authorship they rarely have any doubt whatsoever.

Unfortunately such easily recognised handwritings are fairly rare and the handwriting of the majority of people at first sight, at any rate, appears to possess insufficient individuality to enable its authorship to be established, if need be, to the standard of certainty required in criminal proceedings where it may be vital to the accused.

Unless what approximates to occult powers are claimed by the person making the examination, it is obvious that handwritings can only be compared in order to decide the question of common authorship on the basis of the similarities or dissimilarities they may exhibit.

If an attempt is to be made to compare handwritings on the basis of similarities and dissimilarities, two main difficulties have to be faced at the outset.

The first difficulty is the variation to be found in the handwriting of any individual. This is mainly occasioned by variation in the conditions and circumstances in which the handwriting has been written. A certain amount of variation is inevitable and experience has shown that probably no one is capable of writing two specimens of his own signature which are perfect replicas of each other. This fact has often been used to demonstrate that a number of signatures which at first sight appear to be faultless have, in reality, been produced by a tracing process from a genuine signature, as this constitutes the only reasonable explanation for the existence of a number of signatures which are virtual replicas of each other; the mathematical odds against even two signatures being replicas are very great. Where, as in some cases dealt with, a dozen or more signatures on a series of questioned documents are found to be replicas, the odds against this happening are astronomical. The demonstration of the exact similarity of the signatures by means of superimposed photographs is usually sufficient to prove their spurious nature beyond all reasonable doubt.

Incidentally, the careful drawing needed to ink-in a signature by whatsoever process it has been traced may be fully exposed by the production of greatly enlarged photographs when the poor line-quality and hesitant writing of the tracing can be contrasted with the fluent line of the genuine signature.

The second difficulty stems largely from the fact that universal education has resulted in a uniform standard of handwriting now being taught, in marked contrast with the old days when one of the main duties of the writing master was to set the copies from which the pupils learned to make their letters.

This is undoubtedly the reason why so many handwritings have so many features in common. This is particularly the case with the handwritings of people who write very little and whose handwriting has consequently departed but slightly from that which they were taught at school. On the other hand, the desire for speed coupled with carelessness and lack of skill in writing usually results in the practised handwriting of those who write a great deal departing so far from the conventional copy-book formations that in many cases whole words may become completely illegible and their sense has to be gained from the presence of a few recognisable letters and reference to the context.

From a cursory appreciation of the two difficulties mentioned above, it would seem at first sight that as the handwriting of any individual exhibits variation and as at the same time the handwriting of different persons must have many formations in common, it would prove a profitless task to attempt to compare handwritings, in order to decide whether they are of common authorship, on the basis of their similarities and dissimilarities.

“ Master patterns ”

Experience has shown that the position is not nearly so hopeless as it may appear, for if a number of specimens of handwriting of any adult, even if written over a period of several years, be compared with each other with respect to the design of any particular letter, two features become apparent.

In the first place the natural variation already referred to will result in very few of the letters examined being exact replicas of each other, but secondly, in spite of this variation, it will be seen that the design of any particular letter chosen for examination remains constant in its essentials. In fact the majority of the examples of any letter chosen for examination can be seen to be but variations on a "master pattern" and these same "master patterns" run right throughout all the specimens of handwriting examined. This means that every handwriting of an individual may be characterised first by the "master patterns" to which the writer adheres and secondly by the degree of variation about the "master patterns" exhibited by the writer.

A legible handwriting is characterised by its master patterns following closely upon the copy-book standards. A highly individual or personal handwriting is one which employs "master patterns" which deviate widely from copy-book standards and which may in some cases include formations taken from a foreign alphabet such as the Greek: everyone is familiar with the common use of the Greek ϵ and the rather less common use of the Greek δ for the terminal "d."

A poor handwriting is one where the range of variation about the "master patterns" is fairly considerable and when this is accompanied by considerable variation, unusual slope, or carelessness in forming the letters, the result is illegible handwriting.

Normally, handwriting contains about 40 letters—capital and small—in constant use. Experience has shown that for the majority of letters of the alphabet there can be found in contemporary handwriting at least a dozen or so quite distinct "master patterns." When all these possible variations on the "master pattern" of each of the 40 or so letters are taken into consideration, it follows that the number of permutations in design of a developed handwriting can be very great and that consequently the odds against two persons writing the same handwriting are very great indeed.

Any attempt to put the subject on a mathematical basis is unlikely to succeed because the "master patterns" in any handwriting are by no means unrelated to each other. For example, in any handwriting the design of the "a" is very likely to be closely related to that of the "d" for they have practically the same letter formation. Similarly related are the " n " and " m," " e " and " l."

Disguise

When the examination of a handwriting has to be carried out, the first procedure is to examine the handwriting for the presence of disguise. Disguise and its detection in handwriting is a subject in itself and cannot be treated in a few words in an article such as this. Many of the unfortunate errors made by so-called handwriting experts in the past have been due to their either failing to recognise certain differences in two handwritings actually written by the same person as due to disguise or, with usually far more serious consequences, considering certain consistent differences, which should point to different writers being concerned, as disguise and so wrongly attributing a questioned handwriting to the victim of their incapacity.

This is what happened in both the notorious *Adolph Beck* and the *Binney* cases. The differences in the rather similar handwritings in each case were obvious on close examination, but they were incorrectly attributed to disguise.

Briefly, disguise may be recognised by first comparing certain groups of letters of a handwriting suspected of disguise with each other. As stated above many letters such as " a " and " d," " n " and " m " are closely related and it is rarely that the disguise introduced takes this into account. Secondly, the introduction of disguise is rarely complete—some undisguised examples nearly always slip through unnoticed and in many cases some of these unnoticed letters are subsequently " touched up " and this exposes both the fact and the nature of the disguise being adopted. Thirdly, there is invariably a lack of fluency associated with the writing of a disguised handwriting and finally, men's minds work in very narrow grooves. It is remarkable how consistenly certain forms of disguise are used and here experience is all-important in their detection.

A collection of some thousands of specimens of handwriting written (1) at normal speed, (2) as fast as possible, (3) with the unusual hand, (4) disguised, is constantly being added to at the Home Office Forensic Science Laboratory at Cardiff and this constitutes invaluable raw material for investigating the effect of both unnatural speed and disguise on normal handwriting.

Design and variation of "master patterns"

The next stage, taking into consideration any disguise which is present, is to determine the exact design of the "master patterns" and also the range of variation associated with each.

If a "master pattern" follows closely upon copy-book design, then its value for giving individuality and hence for identifying a handwriting is necessarily small. If the copy-book form is departed from, then the evidential value of such an unconventional form in the handwriting depends upon its rarity in the class of handwriting being considered.

Here, nationality plays its part. English, American, French and German handwritings all have their own peculiarities and so have the handwritings of different ages. In order to assess the evidential value of the presence of a certain "master pattern" in the handwriting, the examiner must be familiar with the handwriting of the nationality and age to which the handwriting belongs. Experience in examining modern British handwriting is of little use when German handwriting is in question and the same thing is true of, *e.g.*, eighteenth-century English handwriting, any specimen of which will appear to the uninitiated to be full of unfamiliar characteristics which, however, may not be characteristic of the individual who wrote it, but of the period in history during which it was written.

When the examination of a specimen of handwriting has been completed, the examiner has in mind a picture of the "master pattern" and also the range of variation associated with each. This gives the handwriting an individuality which is the greater the rarer the occurrence of the "master patterns" represented therein. Armed with this information other specimens of handwriting may then be tested for common authorship by a search being made for the same patterns and their associated range of variation.

When what appears to be significantly similar handwriting has been discovered a further test must be applied before any possibility of common authorship can be assumed. This test, which is all-important, is to ensure that the second handwriting does not exhibit any consistent dissimilarities not capable of reasonable explanation when compared with the standard handwriting. If but one such consistent dissimilarity be present, it must outweigh the most impressive list of master patterns in common. This may seem a harsh doctrine, but its value has been demonstrated on more than one occasion. The handwritings of certain people, especially if they are near relatives, are often remarkably similar and in a number of cases where limited amounts of handwriting are in question, only a small though significant amount of dissimilarity may be observable.

Summing up the evidence

When all the foregoing has been completed, the task of the examiner is to sum up the available evidence to determine what opinion he is justified in expressing. Very often he can have little hesitation in expressing the opinion that two or more specimens of handwriting were written by different persons. Exclusion is often definite.

Where fair quantities of consistently written developed handwriting are in question the examiner may feel able to declare that the evidence of common authorship is overwhelming, extending far beyond reasonable doubt. With small amounts of handwriting or where there is considerable natural variation, a much more guarded opinion may be all that can be justified on the evidence available, and whilst this may be useless in the event of proceedings, it may very well serve to direct a police investigation into profitable channels. In other cases, with poor undeveloped handwriting, even though considerable amounts are available, the examiner is forced to confess that the task is beyond his powers and that there is insufficient evidence to justify his expressing any worthwhile opinion whatsoever.

There is an impression that unlike cursive handwriting, no comparison of block lettering to determine its authorship is practicable. Whilst it is usually impossible to make any effective comparison between cursive handwriting and block lettering, two specimens of block lettering may be compared on the same principles as those which are applied to cursive handwriting. The only protection a writer of an anonymous letter in block lettering gets is that it is usually difficult to come by a specimen of block lettering written by the suspect with which the comparison may be made.

Presentation of the evidence

It is the duty of an expert witness on handwriting, wherever possible, first to present to the court the problem he has been called upon to deal with in such a way that the court is in a position to appreciate for itself the facts, then to explain the theory of the investigation which is being applied to the facts whose existence has been demonstrated and then, and only then, to express the conclusions at which the witness has arrived.

The use of photography enables the court to decide the case on the evidence and not merely on the opinion of the witness in the case of the comparison of handwriting. The court can be presented with comparison tables which show enlarged photographs of letters, groups of letters and sometimes words taken from a set of handwritings of known origin placed alongside the same letters, groups of letters and words taken from the questioned handwritings. The comparison tables must be fairly drawn up so that they illustrate truly representative extracts from the various handwritings and a sufficient degree of enlargement employed to enable the witness to demonstrate the significant structure of the handwritings illustrated. He can then point out that certain characteristic letter formations are common to both handwritings. Finally, from his experience the witness can speak of the frequency of occurrence of these designs in contemporary handwriting so that an estimate can be made of the probability of such features being merely fortuitous and not indicative of the two handwritings having been written by the same person. Cross-examination provides an ample opportunity for suggesting the presence of dissimilarities which would invalidate the basis of the opinion of common authorship.

It is hoped that this article has shown that the comparison of handwriting for evidence of authorship has a scientific basis and does not depend upon " flair " or subjective impressions.

The Recovery of Costs Awarded by Quarter Sessions

By Brigadier A. C. C. WILLWAY, C.B., C.B.E., T.D., D.L.
Deputy Chairman, Surrey Quarter Sessions

The law regulating the award of costs at quarter sessions and enforcement of such orders has been affected by recent legislation and it may be useful to review the present situation with particular reference to the position of local authorities.

Cases tried on indictment

In cases tried on indictment the Costs in Criminal Cases Act, 1952, has replaced the similar Act of 1908. Under it the court may, and almost invariably does, order the payment of the prosecution's costs out of local public funds and it may, and exceptionally does, make a similar order in favour of an acquitted defendant. In practice, where the normal costs of the prosecution are concerned, the clerk of the peace draws the order on the county or county borough treasurer as a matter of course.

The court may make a specific order for payment by a convicted person of the whole or part of the prosecution's costs and, in exceptional circumstances, by a prosecutor in favour of an acquitted defendant (section 2). This order may be, and usually is, in addition to the order for payment by the local authority. When both orders are made the local authority is primarily responsible and pays on sight of the first mentioned order but has a right of recovery against the person made liable in the other order. Payment may be enforced as an order for costs made by the High Court in a civil case or as a sum adjudged summarily to be paid as a civil debt (section 10). This procedure applies also to orders for costs on the disposal of cases committed to quarter sessions for sentence under sections 20 and 29 of the Criminal Justice Act, 1948, to committals for sentence and to appeals to quarter sessions under the Vagrancy Act, 1824, but not to any other appeals (section 14).

Appeals

The position is not so clear on appeals to quarter sessions other than those under the Vagrancy Act. In Chapter 19 of Willway's *Quarter Sessions Practice* it is shown that quarter sessions can only award costs where there is express statutory authority and that they can only be awarded in favour of and against a " party " to an appeal. Where there is such statutory power the first question must be " Who are the parties ? "

In a civil matter such as an appeal against an affiliation order there can be no question. It is *inter partes* in the usually accepted sense of a dispute between subjects. But there are no such parties in a criminal proceeding because it is brought in the name of the Crown. Yet the word " party " must be given a significance in a criminal appeal to quarter sessions as it is used in statutes governing the procedure on such an appeal and particularly in the Summary Jurisdiction (Appeals) Act, 1933, under which all the criminal appeals to quarter sessions are brought. Section 5 of that Act treats the appellant and the respondent as the parties to the appeal. The appellant, of course, declares himself by his notice of appeal, but who the respondent may be is not at first sight so clear. Every appeal under the 1933 Act is against " a conviction, sentence, order, determination or other decision of a court of summary jurisdiction " (section 1) and the justices appealed from are the nominal respondents, but they are clearly not the respondents for the purposes of orders for costs. In *R.* v. *Kent JJ., ex p. Commissioner of Metropolitan Police* [1936] 1 K.B. 547, Humphreys J. said in the course of his judgment, " the justices themselves have an absolute right to appear. . . . In so doing they do not make themselves a party to the appeal." Section 84 of the Magistrates' Courts Act, 1952, provides that the notice of appeal is to be served on the clerk of the magistrates' court and on " the other party," so it is clear that there is a distinction between the nominal respondents, the justices, who are not a " party " and the real respondent who is.

Police prosecutions

In the *Kent* case, Humphreys J. also said " The party who initiated the proceedings would of course normally be a proper respondent, and perhaps the only respondent." In a private prosecution this person is, of course, the informant, but when, as in most cases, the police prosecute, the answer is not so easy. The practice varies and it is by no means universal for the police officer who lays the information to be responsible for the conduct of the prosecution. In the Metropolitan Police Force all proceedings are regarded as undertaken in the name of the Commissioner and in this and some other police forces the question of which officer initiated the proceedings is considered of small importance.

Probably most people when they speak of a police prosecution think of "The Police" in an impersonal and collective sense, and, if they consider the point at all, assume that costs awarded to the respondent are awarded to "The Police." It is an easy extension of this line of thought to assume that the police authority is the body which represents "The Police" in such a matter. This probably explains how the custom has grown by which a local authority which is responsible for the expenses of a police force itself takes action to enforce an award of costs at quarter sessions and may also explain how it is that the subsequent court proceedings are often successful.

There is no known authority on the point, but while admitting the convenience of this direct way of reimbursing public funds which have been called on to pay the costs of opposing an appeal, it is hard to justify it on strictly legal grounds. Section 5 (2) of the 1933 Act provides that costs awarded against one party at quarter sessions "may be recovered summarily as a civil debt by the party to whom they are ordered to be paid." Neither the police authority nor the council of a county or county borough is a party to the proceedings. Who, then, is the real respondent when "The Police" prosecute?

The purist may say that no one but the informant qualifies as the "party who initiated the proceedings," but it is suggested that section 84 of the Magistrates' Courts Act, 1952, provides a way over this obstacle. As already mentioned it requires the appellant to give notice to "the other party" as well as to the nominally respondent justices. In the Metropolitan Police Area notices of appeal are served on the Commissioner but in other parts of the country it is usual to serve them on the divisional superintendent. The important point is that the notice names the respondent and he is the person legally entitled to recover costs awarded against the appellant.

The question is how best to marry theory and convenient practice. As the expenses of the respondent are borne by the police authority and paid out of the local authority's funds the latter, and not the police officer made respondent, is entitled to the benefit of the order against the appellant. There is no reason why the local authority should not take proceedings to enforce the order but, to avoid the risk of a technical objection to its right, it should take them in the name of the police superintendent or other officer named in the notice of appeal. The Commissioner of the Metropolitan Police has, of course, his own legal department.

Writing off sums

A question has been raised as to the proper authority for writing off any sum under an order for costs which ultimately becomes irrecoverable. As the costs of opposing an appeal are authorised, in a county, by the standing joint committee and are an item in its accounts it would appear to be the proper body to deal with the matter in the first instance, but it is difficult to see what objection can be taken to the practice which is sometimes adopted of leaving it to the finance committee of the county council. If this is done it should be at the express wish of the standing joint committee.

In a county borough there are fewer links in the chain as the watch committee, which is the police authority, is a committee of the council, but it is as important here as in a county that the respondent identified in the notice of appeal is made the plaintiff in an action to enforce an award of costs.

A Day in a Police Court

By A. E. Jones
Magistrates' Clerk

The series of which this is the seventh instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Housebreaking and Larceny

The warehouse raid

Once more the kaleidoscope of the dock changed its pattern at the touch of the assistant gaoler. Mure was bringing from the prisoners' assembly room three figures who were to the court a depressingly familiar repetition of a stock type. In shoddily smart clothes George Shenstone, Albert Packer and Frederick Radley stepped unconcernedly up the double step and, before turning to face the magistrate, grinned and sketched a wave to three young women—also stock types—at the back of the court. In another group among the "public" were three shabby, toil-worn women who cast encouraging, anxious looks at the defendants and were their mothers.

According to the charge sheet Shenstone and Packer were twenty years of age and Radley a year younger. According to the charge sheet again, each was a labourer. It was the routine answer to the routine question at the police station. The charges against the defendants filled two whole sheets. Shortly, they were accused first of stealing a car, secondly, or alternatively, of driving it away without being authorised to do so; thirdly of using it without being covered against third party risks; fourthly of breaking into a factory and stealing 15,840 cigarettes; and fifthly with being in possession of housebreaking implements at night without lawful excuse. Shenstone, in addition, was charged with driving in a manner dangerous to the public and with not having a driving licence in force.

The defendants, in one adventure, had achieved the feat of committing indictable and summary offences of every category so far as the magistrate's jurisdiction was concerned.

There was no need, at the moment, for the court to occupy itself with the procedural points which arose, for the detective sergeant in the witness box was saying "I respectfully ask for a remand in this case, your worship, after evidence of arrest. There will probably be further charges of shopbreaking preferred at the next hearing. The defendants have made statements admitting other offences. The police are objecting to bail."

"I shall be in a better position to decide that matter when I've heard the evidence of arrest," said Mr. Sutterthwick.

Evidence of arrest

As a uniformed constable made his way to the witness box Frell, the clerk, turned his head to glance at the prisoners and noticed that George Shenstone's jaws were champing steadily.

"What are you chewing?" he inquired coldly.

Shenstone's face froze. "Nothing," he mumbled.

"Is it chewing gum?"

"Yes," was the reluctant admission.

"Take it out of your mouth, then. This isn't the place for that sort of thing."

"Ain't got nowhere to put it," said the defendant sulkily.

"Take it out immediately," said Mr. Sutterthwick sharply.

Reluctantly George Shenstone extracted from his mouth a sticky blob which, after a glance first at the dock rail and then at Mure, he decided to put in his pocket.

The constable, who had been standing with the New Testament upraised while these exchanges were taking place, now read off the oath at express speed and added without pause his name, rank and number as if they were part of an invocation to the Deity. The clerk prepared to take a deposition.

"At 1.35 a.m. last night, your worship," began the officer, "I was on duty with other officers in a police car when I received a wireless message that private motor car number SIX 14 had been stolen from . . ."

"Don't tell us what the message was," interrupted Frell, "that isn't evidence."

A moment's thought brought to the constable's mind the proper way to mention what he wanted to convey. Stolidly he resumed, "In consequence of a wireless message received, I kept observation on the index numbers of passing cars and at 1.47 a.m., as we were passing the mouth of Park Road, I saw car number SIX 14 about which I'd had the message. The car was stationary a few yards down, outside a wholesale tobacconist's warehouse. The police car turned round in order to proceed into Park Road. I heard someone shout and, by the time we had turned the corner, the other car had started up and was making off at a fast speed up Park Road. We gave chase and called on the car in front to stop. I could see somebody in the rear seat looking back at us but the driver accelerated and turned right into Aberdeen Road. We followed and several times nearly drew level, but each time the driver of the other car swerved violently across our front, causing our driver to brake and swerve to avoid a collision. At times the speedometer of the police car recorded between 50 and 55 miles per hour. Finally the other car turned left into Water Lane and took the corner so fast that the driver appeared to lose control. The car zigzagged for some yards and then slowed down, at the same time turning diagonally across our path. While it was still in motion the doors opened and four men got out and ran away. The car continued on, mounting the kerb, and crashed into a garden wall doing considerable damage both to the wall and the car. We got out of our car and chased the men on foot. I saw the prisoner Shenstone caught by another officer after a few yards. The three other men proceeded on and at Laburnum Avenue one of them turned right. I followed the other two along Water Lane and after about 300 yards I caught the prisoner Packer. Before I could say anything he said 'All right, guv'nor. I've had enough. I won't give you any trouble.' I cautioned him and told him I should arrest him for being concerned in stealing the car. He replied 'O.K. You got us bang to rights.' I handed him over to another officer and went on up Water Lane. When I came to the junction of Milton Grove I heard shouts from the garden at the rear of the corner house and saw torches flashing. I found other officers searching the garden and the neighbouring gardens. I returned to the street and soon afterwards saw the prisoner Radley come out of the front garden of No. 7, Milton Grove. I went up to him and noticed that he was breathing heavily. I asked him what he was doing there. He said 'I've just been helping the police look for a bloke who pinched a car. I think he came out this way.' I asked how he knew a car had been stolen. He hesitated and then replied 'The police said so.' I asked his name and address and he gave the name John Smith of 35, Arundel Road. I said I should go there with him to verify that statement and he then said 'All right, you win. I'm the one you're looking for. I'll come clean.' I told him I should arrest him for being concerned in stealing a car and cautioned him. He said 'I'll tell you all about it at the station.' He was taken back to the police car where the other two prisoners were being detained. The fourth man was not caught. We then went with the three prisoners to the tobacconist's warehouse in Park Road where we found that the padlock was broken and the door had been forced open. Just inside, a number of packages were piled up, apparently ready to be taken away. The prisoners were told they would be charged with breaking and entering the premises. Shenstone said 'You were very quick. Did somebody shop us?' Radley said 'We didn't pinch nothing. The stuff's still there.' The other prisoner made no reply. In the car which they had abandoned was a jemmy which fitted the marks of forcing on the door of the warehouse. When this was pointed out to the defendants Radley said 'Yes. That's the stick that was used, but it doesn't belong to any of us. It belongs to the fellow who got away. I don't know his name or where he lives. I'd never seen him before tonight.' Shenstone said 'You don't expect us to grass him. You're the copper. It's up to you to find him.' Packer said 'I only know him as Ginger. He brought it along. I suppose we shall all get blamed for it. This is just my luck.' They were all taken to the police station and formally charged and cautioned. They made no reply. Later they all made statements which were taken down in writing by a detective officer."

As this tale was told in short phrases adapted to the speed at which a legible longhand deposition could be written, the magistrate and clerk mentally ticked off as they emerged the elements necessary to establish a prima facie case against each defendant. When the statements after arrest were given the ground seemed to be cut from under any possible defence.

The probation officer's thoughts

In the probation officers' box next to the pressmen, Caylip was considering the case from another angle. He might be closely concerned with the future of these three young lives. He had tried once already to save Radley and Shenstone from themselves when eighteen months ago they were put on probation for being suspected persons loitering with intent to steal from cars. That was not their first conviction and he had found them, to begin with, hardened young toughs. But during their probation he felt he had got under their skins and they seemed to have pulled themselves up under his tutelage. At any rate they got jobs which they kept, and they made their fortnightly reports to him satisfactorily. But no sooner had their twelve months' probation period expired than they cut themselves adrift from him, as was their legal right. And now here they were, bad pennies turning up again, with probably a whole series of shop-breakings to answer for by the time the police had completed their investigations. Still Caylip had a firm faith that these three lads had good in them and were not so very different at bottom from their fellows who did not get into trouble. Perhaps they were vainer, lazier, less disciplined, more pleasure-loving, but all that was only a question of degree, not of kind. However, the fact must be faced that it might end up in their being placed socially in a different category from the rest of the community; they were on the way to becoming professional criminals.

Shenstone, the probation officer felt, probably needed a stern lesson and a period of firm discipine in Borstal; he was more cunning and more of a leader than Radley and he had never seemed quite trustworthy even when apparently going on all right. But Radley, Caylip hoped to have on probation again. Packer, he did not yet know but on the evidence he seemed a good deal less experienced than the other two. Inquiries would have to be made into his home life and work record before Caylip could confidently make any recommendation as to his future.

Prevarications

The probation officer cut short his speculations to listen to what the defendants were saying. They had had no questions to ask the police witness, but as soon as Mr. Sutterthwick uttered the words " Very well, then; you'll be remanded for a week," they burst forth almost in a chorus with " Can I have bail, sir? "

" The police oppose bail strongly," announced the detective sergeant, " We hope to arrest the fourth man who got away and we fear that if the defendants were at large they would hamper our inquiries in that direction. They've only been sleeping at home occasionally for some weeks now, and their parents have no control over them. There's a likelihood that they might commit further offences of a similar nature if allowed bail. None of them is in work."

"I've got a job to go to on Monday, sir," broke in Radley.

"I can get a job too," said Shenstone.

"So can I," chimed in Packer.

"Then it's a great pity you didn't all do so earlier," commented the magistrate. "No, I don't think I can grant bail at present. You must remain in custody."

A murmer of feminine disapproval broke out at the back of the court but a loud "Silence, please," from Sergeant Quing quelled it.

"Can I see my young lady before I go?" demanded Shenstone.

"What for?" asked the magistrate.

"To settle up my affairs, sir," was the reply after a moment's hesitation.

"No, it doesn't sound to me a necessary or desirable interview."

"Well, can I see my mother, sir?" inquired Radley; mothers have their uses in times of emergency—they can, at least, convey messages.

"Yes, you can see your mother."

"Can I, sir?" broke in Shenstone eagerly.

"Yes, you can all see your mothers, subject to the usual police precautions."

"This way, please," said Mure.

But Radley's remembered experience bore fruit in another question to the magistrate.

"Can I have the money that was found on me, sir? The police haven't given it to me back."

"What do you want it for?" asked Mr. Sutterthwick, though he knew the answer.

"To buy food and cigarettes while I'm on remand, sir."

"What's the police objection?" asked the magistrate, "There's no money involved in the present charges."

"No, sir," said the detective sergeant, "But we anticipate preferring further charges involving the theft of goods and money to a considerable amount."

"Still, you don't expect to be able to identify the money on the defendants with the property stolen, I suppose?"

"No, your worship. But I must point out that the defendants haven't earned any money by work for several weeks now."

"How much was found on them?"

"£5 9s. 2½d. on Shenstone; £7 11s. 6d. on Radley and £2 4s. 5d. on Packer, your worship."

"Well, let them have £1 each for this week. I'll consider the matter again next week when I see the further charges."

"Thank you, sir," chorused the prisoners.

"This way," said the assistant gaolor, omitting "please" this time in his impatience at these delays. But Shenstone had thought of something else. "Can I see the probation officer, sir?" he asked, remembering how useful a friend at court had been previously.

"Yes," said the magistrate, "I expect Mr. Caylip will want to see all of you."

It was Radley's turn to think of something else. "Can I have free legal aid, sir?" he said.

"Not at this stage," said Mr. Sutterthwick, "I'll consider the application again if any legal difficulties appear in the case. There isn't any sign of them at present."

"I'm not very good at speaking in these places," said Radley.

"I hadn't noticed it," replied the magistrate, and Mure at last got the three young men out of the dock. They left quite cheerfully through the door marked "Prisoners," but their female adherents went out with indignant murmurings and black looks at the detective sergeant and the magistrate.

Mr. Sutterthwick turned to Inspector Campting and said "Whatever the result of this case I would like to commend the arresting officers for their courage, persistence and intelligence."

"Thank you, your worship," said the Inspector and made some notes for a later, official, report to his superiors.

Servants' thefts

Another trio entered the dock—three plainly dressed factory workers, this time. They were charged with stealing twenty-four gallons of paint from their employers; it was a case which the detective sergeant in charge of it asked the magistrate to deal with. The clerk addressed the defendants in the prescribed terms and all three, on hearing that their trial could take place there and then if they agreed, readily agreed. They admitted their guilt with equal readiness.

The story was soon told by the detective sergeant. The police had had complaints of losses from a firm of builders' merchants and yesterday, as a result of their inquiries, they had followed Frederick Lambert, one of the firm's van drivers, on his delivery round with his mate, Paul Botting. At about one o'clock the lorry drove to Lambert's address and there the two men unloaded twenty-four gallon tins of paint, carried them through the premises and put them in a shed at the rear. They were preparing to drive off again when the detectives stopped them. The surprise was complete and a few questions soon brought out the complicity of Alfred Gadsden, head storekeeper at the firm's warehouse. When he was interviewed by the detective sergeant he confessed promptly that he had let the other two have the paint although they had no delivery voucher for it. At the police station Lambert had remarked "We had been asked to get some paint by a chap, but I won't give you his name because I don't want to get anyone else into trouble." Gadsden's only statement was "This will ruin me." Botting said "All I was to get out of it was a quid for keeping my mouth shut." All three prisoners denied that they had ever done such a thing before, added the detective sergeant with obvious scepticism.

"Is that all true, what he says?" inquired Mr. Sutterthwick of the accused. All agreed that it was.

"What is known about them?" was the next question.

"The prisoner Gadsden, your worship," began the officer, consulting his notes, "has no previous convictions. He is 49 years of age and is a married man with a grown-up family. He occupies a three-roomed flat, the rent of which is 23s. 9d. a week. His wages are £8 10s. a week and he has been with his present employers for just on nine years. They trusted him implicitly and he has always been an excellent worker. He tells me that he has been betting heavily at the 'dogs' recently and he has apparently got into debt as a result. The prisoner Lambert, your worship, has one previous conviction —four years ago—when he was bound over for twelve months in the sum of five pounds for stealing towels from his employers. He was employed as a van driver at a laundry then, your worship. He is a married man aged 32; he has a child of three and his wife is expecting another shortly. He has been with the prosecutors as a driver for just over three years and has always given them satisfaction. His standing wage was £6 a week and he earned overtime in addition. His rent for a four-roomed flat is 18s. 9d. a week. The mate Botting, your worship, is a single man aged 22, living with his parents. His average wage is £5 5s. a week and he gives his mother £2 of that. He has been with the prosecutors about nine months and they give him a good character as a worker. He has no previous convictions."

Once again the defendants agreed that all that the detective sergeant had said was true.

"Will they lose their jobs as a result of this?" asked the magistrate.

"Yes, your worship. The firm employs about fifty men all told and in view of the losses from pilfering they've sustained recently they feel that an example must be made. In fact, one serious aspect of this case, your worship, is that a number of employees have been under suspicion in consequence of these thefts from the warehouse. I can't say, of course, that the defendants have been responsible for stealing anything else besides this paint."

"Well, what have you men to say to me about this? You first, Gadsden. You're the eldest and in the most responsible position," said Mr. Sutterthwick.

The ex-storekeeper moistened his lips and looked miserably at the magistrate. "Nothing to say, sir. . . . I've been a fool. . . . I don't know what made me do it. . . . It'll never happen again if you give me another chance."

"And you, Lambert?" inquired the magistrate.

"The same, sir. . . . I did it on the spur of the moment. . . . My wife's expecting and I wanted to buy one or two things, and I suppose I was tempted. . . . I've never done such a thing before and won't never do it again. . . . Give me a chance, sir, for the sake of my wife. It'll kill her if you send me to prison, sir. . . . She's nearly off her head now with worry."

It was Botting's turn next. "I'm sorry it happened, sir," he said huskily from a fear-dried throat, "I don't know what made me do it. . . . I'll swear I'll never do it again. I've learned my lesson."

"Would you care to tell me," said Mr. Sutterthwick, "whose idea this was?"

There was an uncomfortable pause, then Lambert said, "The boy had nothing to do with it really, sir. He wasn't really in it. I hope you'll treat him leniently, sir."

"What about you and Gadsden, then?" pursued the magistrate. "Which of you two first suggested it?"

The pair stole a glance at one another. Gadsden still remained silent, but Lambert said lamely "I think we both thought of it together, sir."

"I see," commented the magistrate. "Well, if you don't wish to say, I can't make you. Will you tell me then, where you were going to dispose of this paint? Who was the man who asked you to steal it? If you gave information which helped the police to trace a receiver of stolen goods it would show some signs on your part of a desire to make amends and it would weigh with me in my decision what to do with you."

Again there was silence and again the prisoners sought each other's eyes for an instant. Lambert was the spokesman once more. "It wasn't true that anybody had asked me to do it, sir. I only said that because I thought it didn't make it look so bad for me. We hadn't made up our minds what we were going to do with the stuff, sir. Really we hadn't. I don't know why we ever took it. It was a mad thing to do."

"Is that all you want to say about that subject?" inquired the magistrate drily.

"Yes, sir," replied Lambert, rather puzzled at this question which seemed so non-committal, but which, he sensed, indicated disbelief in his assertions.

The punishment

With strained attention the three prisoners watched the magistrate lean back in his chair and gaze for a second or two with meditative eyes at the open register before him. What should be entered in the column headed "Adjudication?" If Mr. Sutterthwick had not long ago decided the general principles on which he must do his job and applied them to many similar cases, the prisoners might have been kept waiting for the answer for minutes rather than seconds. There were so many things to consider. There was the offence itself first. Stealing by a servant is one of the most serious offences—as serious as housebreaking judging by the maximum punishment possible. Employees are bound always to have exceptionally favourable opportunities for unlawfully taking their master's goods. Whatever precautions he may adopt he must build on a basis of trust.

Still, theft from an employer, however grave its nature as a category of crime, can, like any other offence, exhibit in its particular instances a wide range of variations in quality.

This case, however, was not one of taking something of small value for personal use or of falling to exceptional temptation at a time of genuine financial distress. Gadsden, Lambert and Botting used the conventional clichés of their predicament —" spur of the moment," " never done anything like it before," " don't know what made me do it." But the offence was obviously thought out carefully. It bore all the marks, too, of being part of a systematic series of depredations. However, in the absence of definite evidence, that line of thought could not be carried too far.

So much for the offence. Then there were the offenders to consider—these three men of good character in the eyes of the world. Decent, quiet citizens to outward appearance. But what excuse was there for Gadsden's breach of trust? Only a taste for gambling, apparently. Was Lambert's economic position bad enough to extenuate his fall? He was in no worse state than any other young, married motor driver with a growing family. Could one rely on the sincerity of anything he said, except perhaps his exculpation of Botting? The mate's part in the affair was fairly obvious, but it was difficult to be certain which of Gadsden or Lambert was the leading spirit in the enterprise. Lambert had previous experience in such matters but he would hardly have dared to suggest the plan to Gadsden if he had not had cause to think it would be well received.

However that might be, could it excuse the weakness of spirit shown by Botting, that he had been tempted by older men? If he had made any attempt to stand up for the principles of honesty which presumably he held, all the cards were in his hand; a mere hint of a refusal by him to participate would have smashed the whole scheme. Instead he indulged in a false loyalty. False loyalty was characteristic of the other two also, in their failure to betray the intended purchaser of their loot. It had a superficial air of a kind of decency—that refusal to split on a pal. But what did it betoken really except a disinclination to incur unpopularity in a quarter where, if their contrition was sincere, they would not wish for popularity?

You could go on till you were dizzy trying to fathom these eddies of ethics and human nature. But if you were the magistrate you had to arrive at a conclusion, however debateable it might be and however imperfect your data. What was to be done with the accused? It could be said that they had been punished by the loss of their jobs. But that depended on the state of the labour market and the ease with which they could find other work. It could be said that they had suffered already by social disgrace. But that depended on whether their neighbours heard of the affair, how strict the general moral tone of their neighbourhood was, and what value the opinion of their neighbours really had for them.

If they had not punished themselves enough the least penalty the court could impose was a fine. But that might encourage them to look on the matter as purely a financial transaction. They could be put on probation. But was this one of those cases where the help of a probation officer in relieving material distress would at once remove the cause of crime? And could he be expected to start teaching these grown men elementary morals?

Then there was prison. That might put a stigma on them which would mar their whole future; and it could embitter or corrupt them so that they turned permanently against society. On the other hand if they were fundamentally decent they would accept it as the just sequel of their wrongdoing and it would not affect their determination to remain true to their lights in future. If they were incapable of following any such principles it still might make them determine not to transgress again out of fear of a return of the same unpleasant results.

Mr. Sutterthwick wrote in the register and then raised his eyes to the three waiting figures in the dock.

"Paul Botting," he said, "I'll deal with you first. Your case is a little easier than the others—but not much. What you've been a party to was a dirty trick to play on your employer, that's the plain English of it. But it does seem that you took a lesser part in the affair than the other two and you may have been led away by them. Though it's beyond me why you should have been such a weak-minded fool as to let somebody persuade you to throw away a good character in this way. I want to know a little more about you, so I'm going to ask the probation officer to make inquiries about you and report to me in a week's time. You'll be on bail in your own recognisances in five pounds in the meantime."

The magistrate paused while Botting was passed out to Sergeant Chumbleton, the gaoler, for his recognisance to be recorded.

He resumed, "Alfred Gadsden and Frederick Lambert I find it difficult to distinguish between you. You, Lambert, have been in trouble before for this sort of thing; but you, Gadsden, had the position of greater responsibility. There seems no excuse at all for either of you to be guilty of this very grave breach of trust. Lambert, you ask me to deal lightly with you for the sake of your wife. I can't disguise from myself the tragic fact that every time I have to punish a man, those near and dear to him are hurt and suffer. But it wouldn't be justice if I only sentenced unmarried orphans with no friends or relations. You should have thought of your wife before you put your hand to this crime. It's you who have put her in this position, not I. I have a duty to protect the public against conduct like yours. In dealing with this offence I have to consider the effect of my sentence, not only on you two, but on others tempted to act like you did. I know from sitting here that there are unfortunately a number of such employees in this district. I can't pass any less sentence than one of two months' imprisonment on each of you."

"This way, please," said Mure.

There was a piercing shriek and a thud at the rear of the court as Mrs. Lambert fell flat on her back. Two policemen hurried over and began to carry her out. Her husband hesitated in the dock looking towards her.

"Come along, please," urged Mure with both sympathy and authority in his tone. Lambert took a last look at the dangling legs of his wife as she was borne out of court, then turned with set face and followed Gadsden through the door that shut them off from liberty.

Practice and Procedure

Quarter Sessions

Failure to enter recognisances in time on appeal by case stated

It is interesting to note that where there is an appeal by way of case stated from quarter sessions, the procedure differs in cases where the matter does not involve a conviction from cases where there has been a conviction. Where there has been no conviction quarter sessions have at common law a discretion as to whether they will allow an appeal. Where there has been a conviction they can, under section 20 (3) of the Criminal Justice Act, 1925, only refuse to state a case on the ground that the application is frivolous, and the applicant in such cases has, under section 20 (4), a right to apply to the High Court for a writ of mandamus. There is also this distinction that under section 20 (2) recognisances must be entered into before the case is delivered. Delivery means not the lodging of the case but delivery of the case stated as finally settled by the court to the appellant for lodging. By Order 59, rule 30 of the Rules of the Supreme Court the necessity of recognisances can be excluded by the consent in writing of the parties but there is a proviso to the rule that this shall not apply to appeal by case stated from quarter sessions under section 20 of the Criminal Justice Act, 1925. It would seem, therefore, that the correct procedure on an appeal against a conviction or sentence is that the recognisances should have been entered into by the appellant before the case is delivered to him.

What the attitude of the court would be to an objection by the respondent on the hearing of the appeal that the recognisances were out of time is not certain. In *Aspinall* v. *Sutton* [1894] 2 Q.B. 349, there was a failure to lodge a special case within three days of its delivery and the objection of the respondent was allowed. Wright J., however, in giving judgment, did make the point that the Crown Office had been consulted and that it was settled practice that the case must be lodged within the three days. It does seem unusual that in such a matter settled practice of the Crown Office should be allowed to supplement the requirement of a statute. Subsequent decisions have concerned themselves principally with the two procedural requirements that a case must be lodged within the specified time, and that all the justices concerned should sign the case. The principle that appears settled is that objection can result in the appeal not being allowed where the delay is caused through the fault of the appellant. Where the delay is caused through the fault of the justices the statute is deemed directory and not mandatory, and does not result in the case being struck out. The decisions are reviewed by Lord Goddard C.J. in *Moore* v. *Hewitt* [1947] K.B. 831. The position appears to be clarified in two more recent cases. In *Rippington* v. *Hicks & Son (Oxford), Ltd.* [1949] 1 All E.R. 239 at p. 240, the Lord Chief Justice said: "It is said that the respondents ought to have told the appellant that they were going to object. I do not see why they should. If the appellant wants a case stated, it is for the appellant to abide by the rules of the court." Again, in *Roberts* v. *Evans* (1949) 113 J.P. 137 at p. 139, the Lord Chief Justice had this to say: "We had to call attention the other day to the fact that a case was not stated within the proper time. We came to the conclusion in that instance that it was the appellant's fault, and we declined to hear the case because the rule had not been complied with."

It is appreciated that the courts are anxious to avoid delay in the administration of justice. At the same time there must have been a good reason for the Criminal Justice Act, 1925, to have provided that recognisances should be taken before the case is delivered, and there appears no just reason why the principles enunciated by the Lord Chief Justice should not apply. In *Barker* v. *Hodgson* (1904) 68 J.P. 310, where a case stated had not been signed by all the justices, Lord Alverstone C.J. said: "It cannot be struck out because that would be in the respondent's favour, and it does not appear that the appellant is in fault." The implication is that it would have been struck out had the appellant been in fault. On the question of recognisances the matter is entirely in the hands of the appellant and any delay is his concern. [R. P. Crompton, Deputy Town Clerk, Middleton.]

Recovery of costs

See above, p. 518.

Magistrates' Courts

Dangerous driving: careless driving

Under section 35 of the Road Traffic Act, 1934, where a person is charged before a court of summary jurisdiction with an offence under section 11 of the Road Traffic Act, 1930 (which relates to reckless or dangerous driving) and the court is of the opinion that the offence is not proved, then, at any time during the hearing or immediately thereafter, the court may direct or allow a charge for an offence under section 12 of the Act of 1930 (which relates to careless driving) to be preferred forthwith against the defendant and may thereupon proceed with that charge.

A procedural difficulty has been illustrated on the summons of Lady Hamilton of Dalzell for dangerous driving under section 11. She elected, under section 25 of the Magistrates' Courts Act, 1952, to be tried by a jury. She was promptly served with a summons for careless driving under section 12. The defendant was acquitted at Guildford Borough Quarter Sessions on the charge of dangerous driving (section 11) and the Recorder (Mr. Derek Curtis-Bennett Q.C.) severely criticised the police for issuing the section 12 summons after the defendant had elected to go for trial on the section 11 charge. The reason why the second summons was issued was, of course, that if (as happened) the defendant was acquitted by quarter sessions on the charge of dangerous driving quarter sessions had no power to hear a charge of careless driving (this offence being triable summarily only) and the police had therefore served the second summons to provide for this eventuality.

It seems, however, that if the police wish to avoid criticism of this nature, they should not rely on section 35 of the Act of 1934 but should in such a case serve both summonses together.

If the defendant does not elect to be tried by a jury on the dangerous driving (section 11) charge the prosecution should ensure that this charge is heard first by the magistrates. This is to avoid any risk (see 112 J.P.J. 226, 305; 118 J.P.J. 306) of a conviction or acquittal on the careless driving (section 12) charge being set up as a defence on the charge of dangerous driving.

As the law stands, a person who elects to go for trial on a charge of dangerous driving must face the prospect, if he is acquitted on that charge, of being tried a second time by a different court on the same facts. The defence of autrefois acquit will not be open to him on such trial and it may well be that the facts will justify a verdict of guilty on the lesser charge.

It remains to add that Lady Hamilton of Dalzell was later acquitted on the charge of careless driving (*Times*, April 27, 1954).

Warrants of arrest after adjournment

When the Summary Jurisdiction Act was passed in 1848 an adjournment for inquiries after conviction was probably a very rare occurrence; certainly there is no indication in the wording of the Act that such adjournments were contemplated by the draftsman. Section 16, which dealt with adjournments, expressed them as being of the "hearing"; consequently there was some doubt whether a warrant could be issued to arrest a defendant who did not appear on an adjournment after having pleaded or been found guilty. This doubt appears to have been resolved by the wording of the Magistrates' Courts Act, 1952, but whether the result is what was intended is open to question.

Section 14 (1) of the new Act empowers a court "at any time, whether before or after beginning to try an information" to "adjourn the trial." Subsection (3) of the same section provides that "for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case" the court may "exercise its power to adjourn after convicting the accused." A clear distinction is thus drawn between an adjournment of the trial and an adjournment after conviction. This becomes very important when reference is made to section 15. Subsection (1) gives the court power to proceed in the absence of the accused if he does not appear "at the time and place appointed for the trial of an information." Subsection (2) reads: "Where the court, instead of proceeding in the absence of the accused, adjourns, or further adjourns, the trial, the court may, if the information has been substantiated on oath . . . issue a warrant for his arrest. Provided that . . . (*b*) where the court adjourns the trial after having received any evidence, . . . the court shall not issue a warrant under this section unless it thinks it undesirable, by reason of the gravity of the offence, to continue the trial in the absence of the accused."

It follows from the wording of section 15 that a warrant of arrest may be issued after an adjournment only if it is for the purpose of continuing the trial of a defendant, and not if he has already been convicted. There would, of course, be no point in requiring the information to be substantiated on oath if the case were otherwise. What is to be done then with an accused person who resolutely declines to appear before the court after it has adjourned his case for inquiries to be made in order to help the court pass the appropriate sentence? If the court has, at the same time, remanded him on bail the answer is provided by section 97 of the Act of 1952. This authorises the issue of a warrant of arrest in the case of "any person charged with or convicted of an offence" who has failed to appear in conformity with his recognisance. If recourse cannot be had to this provision of the Act the court would appear to have no option but to sentence the defendant in his absence, even though that sentence were a term of imprisonment. Certainly he could not be put on probation in his absence. The moral would seem to be: always remand after conviction, whether the defendant appears on a charge or on a summons. Summonses are quite frequently issued for serious offences and adjournments of them without the question of bail arising are common form, so the problem is not just an academic one. There would, incidentally, be no way of avoiding sentence of the accused in his absence in a case where a conviction had been recorded *ex parte* and he failed to appear on an adjournment ordered because the justices, after hearing his antecedents, considered he should appear before them. [A. E. Jones.]

Case and Comment

[Reports of cases included here are prepared by C. J. ELLIS, *Barrister-at-Law*, unless otherwise appears]

Courts-martial—*Quashing of conviction of accomplice*

R. *v.* HYDE [1] (Courts-Martial Appeal Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 10, 1954).

H. was charged with disobeying a routine order in contravention of section 11 of the Army Act, forbidding troops from selling goods obtained from the N.A.A.F.I. to Korean natives. H. pleaded guilty and was sentenced to 110 days' detention. H. applied for leave to appeal on the ground that he was wrongly advised by his officer to plead guilty. Prior to the charge against H., his sergeant had been charged in connection with the same offence, but on the charge sheet the date of the order which he was alleged to have disobeyed was wrongly entered. The deputy judge advocate, being of the opinion that as the date of the order was wrongly entered the charge was bad, he advised the confirming officer not to confirm the sergeant's conviction. It was for that reason that H. wished to appeal.

Held, dismissing the application, that the mistake in the sergeant's charge sheet was only a clerical error and was a case of *falsa demonstratio* which could have been corrected.

Embezzlement—*Indictment—count alleging general deficiency of money*

R. *v.* TOMLIN [2] (Court of Criminal Appeal: Lord Goddard C.J., Hallett and Pearson JJ.: May 3, 1954) ([1954] 2 W.L.R. 1140; [1954] 2 All E.R. 272).

T. was tried on an indictment containing five counts. The first count alleged that on a day unknown between March 14 and September 26, 1953, T., being a servant of R., fraudulently embezzled £420 15s. 3d. in money received by him for or on account of his employer, R. The second and third counts also alleged embezzlement and the fourth and fifth counts charged T. with falsification of accounts in connection with the second and third charges of embezzlement. T. was employed by R. as the manager of one of his shoe shops. In March, 1953, R. suspected a deficiency of stock and a stocktaking took place. A further stocktaking took place in September, 1953, when it was found that there was a deficiency of £420 15s. 3d. T. admitted the deficiency, but denied dishonesty. T. was convicted on the first, third and fifth counts. T. appealed on the ground, *inter alia*, that the first count was bad in law as alleging a general deficiency of money.

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[1] The applicant did not appear and was not represented.

[2] For the appellant: *Neil Lawson* (instructed by Herington, Willings & Penry-Davey, Hastings). For the Crown: *W. G. Fordham* (instructed G. H. Nightingale, Town Clerk, Hastings).

Held, dismissing the appeal, that it was clearly impossible to trace individual items or prove a conversion of individual property or money and, therefore, it was proper to allege a general deficiency within a specified time. In an ordinary case, where it was possible to trace individual items, it was improper to include all such items in a general deficiency: that was a rule of practice to avoid injustice, not a rule of law applicable in all circumstances.

COMMENTARY. In *R.* v. *Lawson* (1952) 36 Cr.App.R. 30, Lynskey J. held that if the evidence for the prosecution makes it clear that there has been a fraudulent conversion of either the whole or a part of a general balance at one time, it is proper to charge the conversion of a general balance on a day between specified dates. The Court of Criminal Appeal after reviewing the earlier authorities, which are not easily reconcilable, approved this ruling.

See Archbold, 33rd ed., 646, 708.

Evidence—*Admissibility—competence of wife where offence committed against her property*

R. *v.* MOORE (Leeds Assizes: Pearson J.: March 15, 1954) ([1954] 1 W.L.R. 893; [1954] 2 All E.R. 189).

FURTHER COMMENTARY. This case, which was reported at [1954] Crim.L.R. 376, has now been more fully reported, as noted above. It is the first reported case in which the application of section 12 of the Married Women's Property Act, 1882, to a case of arson has been considered. The ruling of Pearson J. is in terms on a question of evidence, but it is of some importance also in relation to substantive criminal law. A woman prosecuted her husband for arson of her dwelling-house. Pearson J. found that at the time of the prosecution the parties were living apart, and it may be inferred that they were also living apart at the time of the alleged arson. On an objection to the wife's evidence, the learned judge ruled that it was admissible under section 12 of the Married Women's Property Act, 1882.

The legal problem cannot be understood without setting out the material words of the section. It provides that "Every woman . . . shall have in her own name against all persons whomsoever . . . (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings for the protection and security of her own . . . property, as if [she were] a feme sole . . . ; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding." Pearson J. held that the wife's prosecution for arson fell within these opening words, apart from the fact that the prosecution was against the husband; but the difficulty arose from the later words of the section, which expressly dealt with this kind of prosecution. "Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife." The use of the word "taken" in this proviso contemplates a larceny, and is inappropriate to arson; but Pearson J. took the view that it was no restriction upon the opening words of the section, because on the facts the parties were not living together at the material time.

In the light of this decision, the law relating to arson or malicious damage by a husband may be summed up as follows.

(1) If he does the act while living apart from his wife, she may prosecute him, and, if she does so, may give evidence against him. (If, however, there is a reconciliation and the parties resume cohabitation, the wife's power to prosecute ceases.) It is not clear whether a third party may prosecute the husband for arson of the wife's property. He cannot do so under the section, which is confined to prosecutions by the wife; but perhaps a third party can prosecute at common law. Even if the prosecution is valid, since it is not brought under section 12 the wife would not be a competent witness against her husband, even though the prosecution was brought with her concurrence and at her request. It is arguable that a third party may not prosecute the husband for malicious damage to the wife's chattels, because the wife's property in chattels depends on the Act of 1882, so that no prosecution lay at common law; consequently the prosecution must be by the wife under section 12.

(2) If the husband does the act while living with his wife he is safe from prosecution by her under the Act. Under the proviso, the wife can prosecute only in respect of a taking of property by the husband when leaving his wife; but since arson and malicious damage are not a taking, she cannot prosecute under the Act for these crimes, even though they are committed by the husband when leaving his wife. It is possible that the wife, or a third party, may be able to prosecute for arson at common

law; but such a prosecution would not be brought under the section, and so the wife would not be a competent witness. As before, it may be that no prosecution lies if the husband's act consists of malicious damage to chattels.

In the converse situation, when a wife damages her husband's property, the law is much the same. The husband can prosecute his wife under section 16 of the Act "in like manner" as his wife could have prosecuted him under section 12; consequently the husband can in such a prosecution give evidence against his wife in the same way as the wife can give evidence against her husband. No prosecution lies under the section if the act of damage was done during cohabitation. As before, it is possible that the husband or a third party can prosecute for arson at common law and that they can prosecute for malicious damage to the husband's chattels at common law. Prosecutions at common law may conceivably be defeated by the joint possession rule, but in fact this rule has only been used for cases of larceny, where possession is in issue, and it seems to be irrelevant if the proceedings are brought for arson or malicious damage.

It can hardly be imagined that these situations were foreseen by the legislature in 1882. The whole subject of legal proceedings between spouses, which occasions difficulties not only in evidence and criminal law but in the law of tort, is more than ripe for consideration by the Law Reform Committee. [Glanville L. Williams, *Barrister-at-Law.*]

Food and Drugs—*Sausages—Deficiency of meat*

WILLIAMS *v.* HURRELLS STORES[3] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 6, 1954) (*The Times*, May 7, 1954).

The defendants were charged with selling pork sausages that were not of the quality and substance demanded by the purchaser, in that they were deficient in meat, contrary to section 3 (1) of the Food and Drugs Act, 1938. The justices found that the prosecutor bought sausages which were marked "Finest Pork Sausages," which on analysis proved to contain only 55.4 per cent. of meat. In the analyst's opinion the pork sausages should have contained 65 per cent. of meat. The defendants' evidence was that 65 per cent. of meat was usually put into their sausages, but due to a mistake, the consignment of sausages to which the sample belonged had a lower meat content. The justices dismissed the information. On appeal:—

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[3] For the appellant: *Paul Wrightson* (instructed by Sharpe, Pritchard & Co., for C. Barratt, Coventry). The respondents did not appear and were not represented.

Held, allowing the appeal, that where no standard was laid down, justices had to ascertain whether the article complied with some notional standard which they found on the evidence. Both sides considered that 65 per cent. of meat was appropriate and there was therefore an obvious deficiency. They were not the finest pork sausages and were sold to the prejudice of the purchaser.

COMMENTARY. See Stone, 86th ed., 890–4.

Habeas Corpus—*Application for writ—issue only where person unlawfully detained*

Ex parte CORKE[4] (Q.B., Divisional Court: Lord Goddard C.J. and Slade J.: May 28, 1954) ([1954] 1 W.L.R. 899; [1954] 2 All E.R. 440).

C., who was serving a sentence of imprisonment imposed on him by a magistrate after a conviction under the Vagrancy Act as a suspected person loitering with intent, applied by affidavit for a writ of *habeas corpus* on the ground that he was wrongfully convicted on perjured evidence.

Held, dismissing the application, that before a writ of *habeas corpus* could be issued there had to be an affidavit showing some ground on which the person could claim that he was unlawfully detained. C. was serving a sentence passed by a competent court, and unless it was set aside by quarter sessions he was lawfully in custody and could not apply for a writ of *habeas corpus*. Persons serving sentences passed by a court of competent jurisdiction should know that *habeas corpus* was not a method of appeal, and their proper course was to appeal to quarter sessions.

COMMENTARY. This case follows the decision in *Re Featherstone* (1953) 37 Cr.App.R. 146, D.C., where a prisoner serving a sentence of preventive detention sought to appeal against the conditions under which the sentence was to be served by applying for a writ of *habeas corpus*. The court held that the court could not grant a writ of *habeas corpus* to a person who was serving a sentence passed by a court of competent jurisdiction.

See Stone, 86th ed., 276.

Indictment—*Embezzlement—general deficiency of money*. See R. *v*. TOMLIN, p. 540, above.

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[4] The applicant did not appear and was not represented.

Intoxicating Liquors—*Sale by agent outside permitted hours—liability of licensee*

BENNETT *v.* HANKS [5] (Q.B., Divisional Court : Lord Goddard C.J., Hilbery and Donovan JJ. : May 12, 1954).

The local agent for a brewery company which owned a hotel, held the justices' licence in respect of the hotel, but lived some twenty miles away, the owners employing a manager, who lived on the premises. Unknown to the agent, on three occasions the manager supplied intoxicating liquor outside the permitted hours. On an information being preferred against the agent under the Licensing Act, 1953, s. 100 (1) (*a*), the justices, applying *Ferguson* v. *Weaving* ([1951] 1 K.B. 814) held that the agent having no knowledge of the offence committed by the manager could not be held liable.

Held, allowing the appeal, that whereas in *Ferguson* v. *Weaving* the licensee was charged with counselling and procuring the commission of an offence, here the agent was charged with an absolute offence for which, following *Police Commissioners* v. *Cartman* ([1896] 1 Q.B. 655), he was vicariously liable. [Reported by J. D. Pennington, *Barrister-at-Law*.]

COMMENTARY. Licensing Act, 1953, s. 100: " (1) . . . no person shall, except during the permitted hours—(*a*) himself, or by his servant or agent, sell or supply . . . any intoxicating liquor."

In *Police Commissioners* v. *Cartman*, *supra*, the licensee was convicted of selling intoxicating liquor to a drunken person where the sale was made by his servant who was acting within the general scope of his employment although contrary to the licensee's orders.

See Stone, 86th ed., 1203 *et seq.*

Lottery—*Competition—prizes for selecting highest-scoring football teams*

BRADLEY *v.* KENCO [6] (Huddersfield Magistrates' Court : Mr. Waldo Briggs, Stipendiary Magistrate: April 26, 1954).

The defendants were charged with distributing tickets, publishing lists of prize winners and using premises for the purposes of a lottery, contrary to section 22 of the Betting and Lotteries Act, 1934. The defendants promoted a competition, which it was contended was an illegal lottery. Each week they published a list of forty-six pairs of football teams which were due to play each other on the following Saturday, and each pair was represented by a code number, which was changed each week. Books containing the code numbers arranged in twenty-five different combinations of three games each were issued to collectors and clients, who paid 1s., selected one combination of three numbers. Collectors were also given team sheets containing all the code numbers set against the matches they represented, and clients could, if they wished, choose their own combination of three numbers, but only a few did so. The majority chose one of the twenty-five printed combinations and often retained the same numbers week after week. The client selecting the three matches (as printed) having the highest aggregate score was paid £100 for a 1s. stake, and the one with the second highest aggregate score, £60 to 1s. There were four other prizes, each of £35 to 1s. for choosing various highest scoring teams. If different codes tied, the prizes would be divided.

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[5] For the appellant: *Paul Wrightson* (instructed by Sharpe, Pritchard & Co., for P. E. White, Welshpool).

[6] Prosecutor: Chief Inspector Bradley of the Huddersfield Police. For the defendants: *Daniel Brabin Q.C.*, *Edward Steel* (instructed by Frank Platt & Fishwick, Wigan).

The prosecution contended that no skill was involved in the competition; even if one took into account the very small degree of skill which a person selecting his own combination could exercise, this was insufficient to prevent the whole competition being an unlawful lottery. The defence argued that the competition was a fixed odds credit lottery; each person knew beforehand that he could select his own combination, and had the means of knowing what the combination he selected meant in terms of matches. He also knew the odds offered and the obligations of Kenco to each individual were fixed and determined.

The magistrate *held* that the competition was an illegal lottery and found the defendants guilty. If the betting had been confined to the first prize only, then following the decision of Atkinson J. in *Boucher* v. *Rowsell* ([1947] 1 All E.R. 870), the fact that some degree of skill could be exercised might have made the competition legal. In that case, however, Goddard J., with whom Oliver J. agreed, expressed the opinion that forecasting which teams would score the largest number of goals was a complete and absolute lottery in itself. [Reported by K. Buckley Edwards, *Barrister-at-Law.*]

COMMENTARY. In *Boucher* v. *Rowsell* (*supra*), the appellant ran a scheme under which he published weekly a list of football teams playing the following Saturday. On payment of sixpence a competitor received a card on which he entered a combination of three teams or, alternatively, a card on which a combination had been inserted by the appellant. The competitor whose combination of teams scored most goals received a prize which was a certain percentage of the money available for distribution. Other similar prizes were given to those whose teams failed to score, or scored least and so on. It was held that the scheme was a lottery.

See Archbold, 33rd ed., 1430; Stone, 86th ed., 1494, and as to the meaning of lottery, Stroud's *Judicial Dictionary*, 3rd ed., Vol. 2, 1691.

Magistrates' Courts—*Procedure—dismissal of case after rejection of submission that there was no case to answer*

HAWKINS *v.* EMDEN [7] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 6, 1954) (*The Times*, May 7, 1954).

E. was charged with unlawfully by negligence interrupting the free passage of a highway contrary to section 78 of the Highways Act, 1835. At the end of the prosecution's case, E.'s counsel submitted that there was no case to answer and the justices rejected his submission. Counsel then said that he would ask for a case to be stated for the opinion of the High Court and would call no evidence. The justices then dismissed the information. The prosecutor appealed by case stated.

Held, allowing the appeal, that the case must go back to the justices with a direction that the offence was proved, and the justices must convict. The court regretted that the justices, having been correctly advised by their clerk that there was a case to answer, had altered their decision merely because E.'s counsel said that he would ask for a case to be stated. It was a lamentable proceeding on the part of everyone except the prosecution and the justices' clerk.

Magistrates' Courts—*Procedure—offence triable summarily or by jury—informing accused—election*

R. *v.* SALISBURY AND AMESBURY JUSTICES, *ex p.* GREATBATCH [8] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 12, 1954) ([1954] 3 W.L.R. 29; [1954] 2 All E.R. 326).

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[7] For the appellant: *Paul Wrightson* (instructed by the Solicitor, Metropolitan Police). The respondent did not appear and was not represented.

[8] For the applicant: *R. C. H. Briggs* (instructed by Beckingsales for William Bache & Sons, West Bromwich). For the respondents: *Gilbert Rountree* (instructed by Taylor, Jelf & Co. for Wilson & Sons, Salisbury).

G. was charged with dangerous driving, an offence for which he could be tried either summarily or by a jury. He was present at the hearing before the justices, where he was represented by a solicitor. According to the affidavits, G. answered to his name and the clerk read out the charge. The chairman, as was his usual practice, then asked G. whether he wished to be tried summarily. G.'s solicitor said that he accepted the court's jurisdiction and pleaded Not Guilty on G.'s behalf. The case proceeded, G. was convicted and fined £10. He applied for an order of certiorari to quash the conviction on the ground that the justices, not having complied with the procedure established by section 25 of the Magistrates' Courts Act, 1952, had no jurisdiction to deal with the case.

Held, allowing the application, that (1) the justices, in accordance with the provisions of section 25 of the Act of 1952, replacing section 17 of the Summary Jurisdiction Act, 1879, should have informed G. of his right to be tried by a jury, and asked him whether he wished to be tried summarily or by a jury. As they had not informed him of his right to be tried by a jury, the justices had no jurisdiction and the conviction would be quashed.

(2) A solicitor or counsel could make the election providing that it was done in the presence of the accused.

COMMENTARY. Magistrates' Courts Act, 1952, s. 25: "(3) A magistrates' court before which a person is charged with a summary offence for which he may claim to be tried by a jury shall, before asking him whether he pleads guilty, inform him of his right . . . and shall then ask him whether he wishes, instead of being tried summarily, to be tried by a jury."

The court emphasised in this case that benches of justices must follow the provisions laid down in section 25 (3). *Per* Lord Goddard C.J.: "They must tell the accused, first, that he has a right to be tried by jury and, having told him of that right, they must ask him whether he wishes to be tried by a jury. I do not think, provided that the question is asked whether he wishes to be tried by a jury, that any particular form of words need be used; he can be told: 'You have a right to be tried by a jury; do you wish to be tried here or by a jury?'"

The court disapproved the dictum of Charles J. in *R.* v. *Quinn, ex p. Halstead* (1943) 107 J.P.J. 459, that "an advocate cannot consent" to summary trial on behalf of his client.

Magistrates' Courts—*Witnesses—exercise of justices' discretion in recalling witnesses*

MIDDLETON *v.* ROWLETT [9] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 5, 1954) ([1954] 1 W.L.R. 831; [1954] 2 All E.R. 277).

R. was charged with dangerous driving. At the end of the prosecution case, R.'s counsel submitted that as the prosecutor had not adduced any evidence that R. was the driver of the car, there was no case to answer. The prosecutor then asked for leave to recall a witness to prove the driver's identity. The justices were of the opinion that the prosecutor's omission to prove the driver's identity was a matter of substance and they therefore had a discretion, which had to be judicially exercised, as to whether they would permit the prosecutor to re-open his case. In the exercise of their discretion they refused to allow the additional evidence and dismissed the information. The prosecutor appealed. His counsel relied on *Duffin* v. *Markham* ((1918) 88 L.J.K.B. 581), a prosecution under the Bread Order, 1917, where the prosecutor failed to put in the order; the court held that the justices should have allowed the order to be put in and Avory J. said that they had a judicial duty to allow the order to be proved.

Held, dismissing the appeal, that the prosecutor had failed to prove a fact which ought to have been the first thing to be proved, and it was not a case where there had been a failure to give formal proof of a public document as in *Duffin's* case. It was a matter of discretion for the justices and if they had come to the conclusion that they would not encourage carelessness in prosecutions, the court could not say that they were bound to allow the case to be re-opened.

COMMENTARY. See Stone, 86th ed., 239.

Murder—*Provocation—effect of drunkenness*

R. *v.* MCCARTHY [10] (Court of Criminal Appeal: Lord Goddard C.J., Hallett and Pearson JJ.: May 3, 1954) ([1954] 2 W.L.R. 1044; [1954] 2 All E.R. 262).

M. was charged with the murder of R. M., having had a considerable amount of drink, got off a bus in which R. had also been riding and they walked along a road together. They then went up a side road where the surface was rough and stony. R. was subsequently found dead, his skull having been fractured in three or four places. The prosecution's case was that M. had knocked R. down and beat his head on the road causing severe injuries. M.'s defence was that R. had committed an indecent assault on him and invited him to commit a homosexual offence. M. said that he was so provoked that he " went raging " and hit R. after which his memory was vague, but he did remember taking hold of R.'s ears and bumping his head on the ground. The judge directed the jury that if the assault and invitation alleged were in fact made, those acts would constitute provocation, and the jury would then have to consider whether the provocation was sufficient to reduce the crime from murder to manslaughter. He then directed the jury that they were not entitled to consider the fact that M. was the worse for drink, but that the test to be applied was whether a reasonable person, in consequence of the provocation received, would be driven to the loss of self-control to the degree, method and continuance of the violence which produced the death. M. was convicted and appealed on the judge's certificate given in order that the court might consider whether the direction given to the jury was correct in law.

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[9] For the appellant: *R. E. Seaton* (instructed by Vizard, Oldham, Crowder & Cash for Bartlett, Walters & Parry, Loughborough). For the respondent: *H. A. Skinner* (instructed by Taylor, Jelf & Co. for Philip J. Hammond, Leicester).

[10] For the appellant: *Elwyn Jones Q.C.*, *A. T. Davies* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *H. Edmund Davies Q.C.*, *Campbell Prosser* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeal, that (1) the judge's direction to the jury was correct. Apart from the case where a man was in such a complete state of intoxication as to make him incapable of forming the intent charged, drunkenness which might lead a man to attack another in a manner which no reasonable, sober man would do, could not be pleaded as an excuse for reducing the crime to manslaughter if death resulted.

(2) On the facts, the provocation would have excused a single blow, but could not have justified the infliction of such injuries as to cause three or four fractures of the skull.

COMMENTARY. This case will be fully considered in an article in a future issue of this Review.

See Archbold, 33rd ed., 21, 936; Glanville Williams, *Criminal Law*, The General Part, Chap. 10.

Obscene Publications—*Onus of proof—innuendo*

Thomson *v.* Chain Libraries [11] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 13, 1954) (*The Times*, May 14, 1954).

Certain books and postcards having been seized from the respondents' premises, they were summoned to show cause why the books and postcards should not be destroyed under the provisions of the Obscene Publications Act, 1857. At the hearing before the justices it was contended by the appellant that the onus lay on the respondents to show cause. It was contended on behalf of the respondents that it was for the appellant to satisfy the justices that the books and postcards were obscene and that he was wrong in refusing to do so; he should have indicated the passages in the books which were relied upon, and in respect of the postcards, where an innuendo was relied upon, should have indicated its nature. The justices agreed with the respondents' contentions and ordered that the books should be returned. On appeal:—

Held, allowing the appeal, that (1) the justices had to look at the books and postcards and come to their own decision whether they were obscene or not: it was not for the appellant to point out the passages.

(2) In connection with the postcards it only confused justices if innuendoes were mentioned, and if a secondary meaning only was relied upon prima facie the postcard would not be obscene.

Commentary. The test of what is obscene was considered in *R.* v. *Reiter* [1954] Crim.L.R. 384. See also Archbold, 33rd ed., 1398; Stone, 86th ed., 1689.

Plea—*Fitness to plead—evidence*

R. *v.* Pratt, *ex p.* Rigau [12] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 13, 1954) (*The Times*, May 14, 1954).

R. asked for leave to apply for an order of certiorari to quash her conviction under section 2 of the Larceny Act, 1916, for shop-lifting, on the ground that her mental and physical condition was such as to disable her from understanding the proceedings. R. was arrested on a Saturday morning in a nervous condition and had been taking drugs. She was taken into custody and the police doctor thought that it was unwise to let her out on bail. On the Monday morning she was brought before the magistrate and asked whether she wanted to be tried by a jury or summarily. She agreed to be tried summarily, pleaded Guilty, gave an explanation of her conduct and expressed her regret. The court was asked to quash R.'s conviction on the ground that she was unfit to plead.

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[11] For the appellant: *Robert Hughes* (instructed by Darley Cumberland & Co. and Lydall & Sons for Townsends, Swindon). For the respondents: *Gerald Draycott* (instructed by Bulcraig & Davis).

[12] For the applicant: *Derek Curtis-Bennett Q.C.*, *Victor Durand* (instructed by Rowe & Maw). For the respondent: *E. D. Sutcliffe* (instructed by Purchase, Clark & Treadwell).

Held, that there was no evidence on the affidavits that she was unfit to plead.

Road Traffic—*Construction and use of motor-vehicles—meaning of "causes or permits"*

SHAVE *v.* ROSNER [13] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 6, 1954) ([1954] 2 W.L.R. 1057; [1954] 2 All E.R. 280).

R. was charged with unlawfully causing a motor-vehicle to be used on a road in such a condition that danger was caused to a person on a road contrary to regulations 72 (1) and 101 of the Motor Vehicles (Construction and Use) Regulations, 1951. The following facts were found by the justices: X's motor-van was left with R., a car repairer, for the brakes to be reshoed, which was done by R.'s workmen. After the work had been completed, R. returned the van to X. Later in the day, when X was driving the van, a wheel came off and injured a woman on the pavement. The wheel came off because it had not been properly fastened by R.'s workmen, when it was replaced after the brakes had been reshoed. It was contended on behalf of the prosecutor that R. knew that X would drive the van believing it to be in a roadworthy condition, and therefore R. caused the vehicle to be used on a road within the meaning of regulation 101 which provides: "If any person uses or causes or permits to be used on any road a motor-vehicle . . . in contravention of or fails to comply with any of the preceding regulations . . . he shall . . . be liable to a fine. . . ." On R.'s behalf it was contended that although R. might be civilly liable to X, he was not criminally responsible because he could not stop the van being used, nor authorise its use, and, therefore, he had not caused it to be used on the day in question. The justices dismissed the summons, considering that there was no case to answer. On appeal :—

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[13] For the appellant: *Paul Wrightson* (instructed by the Solicitor, Metropolitan Police). For the respondent: *Guy Aldous* and *D. Vowden* (instructed by Sandford, Mervyn Taylor & Co.).

Held, that although the accident was due to the negligence of R.'s servants, R. was not the cause of the van being used on the road. R. obviously did not use the van himself nor did he permit it to be used. Where " causes or permits " are found in contrast, " permits " means giving leave and licence, " causes " involves a person who has authority to do so, ordering or directing someone to use the van. The regulation was not wide enough to catch this case.

COMMENTARY. See Stone, 86th ed., 2757, 2763. As to meaning of " causes or permits " see Stroud's *Judicial Dictionary*, 3rd ed., Vol. 1, 423, 428, Vol. 3, 2159.

Sentence—*Gross indecency—boys previously corrupted—reduction of sentence of imprisonment*

R. *v.* BARTON [14] (Court of Criminal Appeal : Lord Goddard C.J., Hilbery and Donovan JJ. : May 10, 1954).

The court dismissed B.'s application for leave to appeal against his conviction on charges of indecent assault and gross indecency with three boys. The court, treating his application for leave to appeal against the sentence of six years' imprisonment in respect of all the charges as the hearing of the appeal, reduced the sentence to four years' imprisonment in all. The court said that they had anxiously considered B.'s sentence. He was of homosexual tendencies, as was shown by the fact that he was found guilty of improper conduct in the R.A.F., but he had no other convictions. The boys concerned had been previously corrupted by someone else, and it might have been that knowing that, B. approached them. The sentence of six years' imprisonment was more severe than was necessary where the boys were already corrupted. The court did not want it to be thought that they were going to regard that as an excuse but, in all the circumstances of this particular case, the sentence would be reduced.

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[14] For the applicant: *Dingle Foot Q.C., T. O. Kellock* (instructed by Dunn & Baker, Exeter).

Sentence—*Preventive detention—length of sentence*

R. *v.* ALLEN [15] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Havers JJ.: May 24, 1954).

A., having been convicted summarily of two offences of larceny in a dwelling-house, was sent to quarter sessions for sentence. A. was thirty-three years of age and had nine previous convictions, in each case asking for other offences to be taken into account. In the present case he had asked for five other offences to be taken into account. The recorder sentenced him to fourteen years' preventive detention. The court, reducing the sentence, said that A.'s offences were of a mean and bad character. He got lodgings and then robbed the landlady or a fellow-lodger and absconded. A. was an habitual criminal for whom the treatment of preventive detention was designed, but he was only thirty-three, and bad as his offences were, they were not as bad as some offences which came before the court; the court had come to the conclusion that while preventive detention was a perfectly proper sentence they would reduce it to ten years.

COMMENTARY. See Archbold, 33rd ed., 1526.

Shops—*Service on a Sunday—motor-car dealers*

WATERMAN *v.* WALLASEY CORPORATION; HESKETH *v.* SAME [16] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: April 27, 1954) ([1954] 1 W.L.R. 771; [1954] 2 All E.R. 187).

W. and H. were each charged that they being occupiers of shops in which they carried on business as motor-car dealers, did not close their shops for the serving of customers on Sunday, August 2, 1953, contrary to sections 47 and 59 of the Shops Act, 1950. In both cases it was proved before the justices that W. and H. were the occupiers of premises where they carried on the business of motor-car dealers; they also sold petrol and motor accessories, and their shops were open for the sale of motor accessories on the day in question. In the case of W., the manager allowed two people to examine second-hand cars and discussions took place, but no sale was made and no money was seen to pass. In the case of H., two people examined the cars on show and were taken for demonstration runs by one of H.'s employees. W. and H. were both convicted. On appeal:—

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[15] The appellant appeared in person.

[16] For the appellants: *George Bean* (instructed by S. Eversley & Co. for G. Gerald Strong, Liverpool). For the respondent: *R. S. Nicklin* (instructed by Field, Roscoe & Co. for Berkson & Berkson, Birkenhead). (Chamberlain & Co. for Town Clerk, Wallasey.)

Held, allowing W.'s appeal, that the purpose of the Shops Act was to protect shop assistants, but there was no evidence to justify the justices in saying that the shop was open for the sale of cars merely because someone came along and asked about motor-cars. On the facts of the case the justices adopted too narrow and rigorous a construction of section 47 and the conviction would be quashed.

Held, dismissing H.'s appeal, that the fact that people were taken for demonstration runs was some evidence from which the justices could reasonably draw the conclusion that the shop was not closed.

COMMENTARY. Shops Act, 1950, s. 47: "Every shop shall . . . be closed for the serving of customers on Sunday: Provided that a shop may be open for the serving of customers on Sunday for the purposes of any transaction mentioned in the Fifth Schedule to this Act." [The sale of motor supplies or accessories.]

Shops—*Service on a Sunday—sale of food*

MARSHALL *v.* SMOLAR AND SOBOLEWSKI[17] (Leeds City Magistrates' Court: Mr. R. Cleworth, Q.C., Stipendiary Magistrate: March 21, 1954).

The defendants were charged under section 47 of the Shops Act, 1950, that, being occupiers of a shop situate in Leeds they carried on the sale of salami meat sausage (not being a transaction mentioned in the Fifth Schedule of the said Act) on a Sunday. An Inspector of the Weights and Measures Department of the City of Leeds was in the shop on Sunday, April 4, and saw a customer being served with a loaf of bread and a meat sausage. One of the defendants gave evidence that much of his trade was with persons who were refugees from Eastern Europe who ate this type of meat sausage, either cold or cooked, as a meal or part of a meal or even as a snack.

The magistrate *held*, following the dicta in *Binns* v. *Wardale* ([1946] K.B. 451) and *L.C.C.* v. *Lees, Same* v. *Iafrate* ([1939] 1 All E.R. 191), that this type of meat sausage was a meal or refreshment within the meaning of Schedule 5 of the

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[17] For the prosecution: Mr. Pearson for the Town Clerk of Leeds. For the defendant: Isadore Fisch.

Shops Act, 1950, but qualified his judgment by saying that this commodity should not be sold in bulk as a commercial proposition on a Sunday but should be sold only for meals or refreshment to be eaten that day. [Reported by Messrs. Spencer & Fisch, Solicitors, Leeds.]

COMMENTARY. Shops Act, 1950, s. 47: "Every shop shall . . . be closed for the serving of customers on Sunday: Provided that a shop may be open for the serving of customers on Sunday for . . . [Sched. 5] the sale of . . . (*b*) meals or refreshments whether or not for consumption at the shop at which they are sold. . . .

In *L. C. C.* v. *Lees*; *Same* v. *Iafrate*, *supra*, the sale of chocolate eclairs, cream buns, jam tarts, fruit cake, swiss roll and veal-and-ham pies was the sale of a "meal or refreshment" and this decision was followed in *Binns* v. *Wardale*, *supra*, where a loaf of bread was held to be a "refreshment."

In both of these cases the court had difficulty in construing the earlier Act (Shops (Sunday Trading Restriction) Act, 1936, ss. 1, 2, Scheds. 1, 2) in view of the ambiguous wording of that Act. This ambiguity appears to have been perpetuated in the comparable provisions (ss. 47, 48, Scheds. 5, 6) of the consolidating Act of 1950.

Sunday—*Execution of search warrant—validity*

MAGEE *v.* MORRIS[18] (Q.B., Divisional Court: Lord Goddard C.J., Hilbery and Donovan JJ.: May 5, 1954) ([1954] 1 W.L.R. 806; [1954] 2 All E.R. 276).

A justice of the peace issued a warrant under section 152 of the Licensing Act, 1953, authorising the police to search certain club premises, which it was alleged were being managed in a manner which would constitute a ground for striking the club off the club register under the Act. The warrant was executed on Sunday, November 8, 1953, and as a result M. and others were charged with offences under the Licensing Act, 1953. At the hearing before the justices, M.'s counsel submitted, as a preliminary point, that the police had no authority to execute the warrant on a Sunday by reason of section 6 of the Sunday Observance Act, 1677. The justices were of the opinion that by reason of section 102 (3) of the Magistrates' Courts Act, 1952, and section 152 of the Licensing Act, 1953, the police could execute the warrant on a Sunday. The case was adjourned and a case stated for the opinion of the High Court.

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[18] For the appellant: *C. J. Cunningham* (instructed by Field, Roscoe & Co. for Berkson & Berkson, Birkenhead). For the respondent: *Paul Wrightson* (instructed by Sharpe, Pritchard & Co. for N. B. Jennings, Salford).

Held, dismissing the appeal, that whatever might have been the interpretation of section 6 of the Act of 1677, a search warrant could be executed on a Sunday by virtue of section 102 (3) of the Magistrates' Courts Act, which Act did not limit the type of search warrant to which it applied.

COMMENTARY. Sunday Observance Act, 1677, s. 6: "' . . . no person . . . upon the Lord's day shall . . . execute . . . any . . . warrant . . . but that the service of every such . . . warrant . . . shall be void to all intents and purposes whatsoever. . . ."

Magistrates' Courts Act, 1952, s. 102: " (3) The issue or execution of any warrant under this Act for the arrest of a person charged with an offence, or of a search warrant, shall be as effectual on Sunday as on any other day."

See Stone, 86th ed., 2267.

Sunday—*Service in shops*. See WATERMAN *v*. WALLASEY CORPORATION, p. 554, above; MARSHALL *v*. SMOLAR AND SOBOLEWSKI, p. 555, above.

Acts and Orders

Animals

HORSES (LANDING FROM NORTHERN IRELAND AND THE REPUBLIC OF IRELAND) ORDER, 1954 (S.I. No. 698): operative June 25, 1954.

Subject to certain exceptions, horses imported from Northern Ireland and the Republic of Ireland may only be landed at certain approved ports, and must be examined on arrival by a veterinary inspector.

For penalties for infringement, see Diseases of Animals Act, 1950, ss. 78–82.

ATROPHIC RHINITIS ORDER, 1954 (S.I. No. 699): operative May 21, 1954; ATROPHIC RHINITIS (COMPENSATION) ORDER, 1954 (S.I. No. 700): operative, May 28, 1954.

Atrophic rhinitis is added to the diseases to which the Diseases of Animals Act, 1950, applies, and is made subject to the Animals (Miscellaneous Provisions) Order, 1927 (S.R. & O. No. 290). Provision is made for the detention and isolation of pigs affected, or suspected of being affected with the disease, and for the cleaning and disinfection of premises and utensils used for such pigs. The Minister of Agriculture and Fisheries may order the slaughter of such pigs and the amount of compensation payable on such slaughter is prescribed.

For penalties for infringement, see the Diseases of Animals Act, 1950, ss. 78–81, 83.

Armed Forces

VISITING FORCES ACT, 1952 (COMMENCEMENT) ORDER, 1954 (S.I. No. 633); VISITING FORCES ORDERS, 1954, DESIGNATION (S.I. No. 634); APPLICATION OF LAW (S.I. No. 635); DESIGNATION (COLONIES) (S.I. No. 637); VISITING FORCES ACT (APPLICATION TO COLONIES) ORDER, 1954 (S.I. No. 636); PUBLIC HEALTH REGULATIONS, 1954, AIRCRAFT (AMENDMENT) (S.I. No. 674); SHIPS (AMENDMENT) (S.I. No. 675): all operative June 12, 1954.

The Visiting Forces Act, 1952, came into operation on June 12, 1954, and its provisions apply to the forces of

Belgium, France, the Netherlands, Norway and the United States of America, as well as the forces of the Commonwealth countries. Certain legal provisions which apply to home forces, and were hitherto applicable to visiting forces under enactments repealed by the Act of 1952, are made to apply to the above forces. These provisions concern, *inter alia*, the power of certain Government Departments to acquire goods and land; the exercise of their functions by special constables employed by the Service Departments; privileges attaching to the vehicles of armed forces; penalties for inducing or assisting desertion; the Public Health Acts; service courts; custody, detention and treatment of persons sentenced by service courts.

The operation of the Act of 1952 is extended, with certain modifications, to Aden, Cyprus, Fiji, Gibraltar, Hong Kong, Malta and Singapore, and, subject to the same modifications, applies to American forces in Cyprus, Hong Kong and Malta.

Aircraft and ships belonging to forces to whom the Act of 1952 applies are exempted from the Public Health Regulations of 1952 (S.I. Nos. 1410, 1411).

Births and Deaths

See DEFENCE REGULATIONS (NO. 1) ORDER, 1954, below, p. 560.

Coroners

See DEFENCE REGULATIONS (NO. 1) ORDER, 1954, below, p. 560.

Courts-Martial

See VISITING FORCES (APPLICATION OF LAW) ORDER, 1954, above, p. 558.

Customs and Excise

EXPORT OF GOODS (CONTROL) (AMENDMENT) ORDER, 1954 (S.I. No. 530) : operative May 3, 1954.

The principal Order (S.I. No. 118; see [1954] Crim.L.R. 312), has been amended.

IMPORT OF GOODS (CONTROL) (AMENDMENT) ORDER, 1954 (S.I. No. 627) : operative May 20, 1954.

The principal Order (S.I. No. 23; see [1954] Crim.L.R. 224) has been amended.

Defence Regulations

DEFENCE REGULATIONS (No. 1) ORDER, 1954 (S.I. No. 638): operative June 12, 1954.

The Defence (Burial, Inquests and Registration of Deaths) Regulations, 1942, which modify some statutory requirements as to the registration of deaths, inquests and burials in so far as they apply to members of the American forces, are revoked. These provisions are replaced by the Visiting Forces Act, 1952, s. 7, which is now in operation; see p. 558, above.

Food and Drugs

OILS AND FATS (AMENDMENT AND REVOCATION) ORDER, 1954 (S.I. No. 531): fully operative May 9, 1954.

Price control on first-hand sales of lard is removed as from May 5, 1954, and the price control of all lard, together with all other remaining controls over the processing and distribution of oils and fats, is abolished as from May 9, 1954. The Oils and Fats (No. 2) Order, 1953 (S.I. No. 1277) is revoked, but without prejudice to any proceedings for its contravention.

SHIPS' STORES (AMENDMENT) ORDER, 1954 (S.I. No. 564): operative May 9, 1954.

The 1953 Order (S.I. No. 1897; see [1954] Crim.L.R. 224) is amended, and cheese, cooking fats, margarine and rice are no longer subject to restriction when supplied for use on ships.

BACON (RATIONING) ORDER, 1954 (S.I. No. 607); FOOD RATIONING (GENERAL PROVISIONS) (AMENDMENT No. 2) ORDER, 1954 (S.I. No. 606); MEAT (RATIONING) ORDER, 1954 (S.I. No. 608): all operative May 16, 1954.

Provision is made for the continued use of the 1953–54 ration documents.

FOOD STANDARDS (MARGARINE) ORDER, 1954 (S.I. No. 613): operative May 16, 1954.

The amount of vitamin A and vitamin D to be contained in margarine is prescribed. The Order is to be construed as one with the (General Provisions) Order of 1944 (S.R. & O. No. 42), and proceedings in England and Northern Ireland for an infringement of article 1 of that Order in respect of margarine may be brought by a Food and Drugs authority without the consent of the Minister of Food.

MEAT (PRICES) (GREAT BRITAIN) (AMENDMENT) ORDER, 1954 (S.I. No. 631): operative May 16, 1954.

The Amendment Order of 1953 (S.I. No. 1409) is revoked, and the maximum retail prices of pork cuts restored to those in operation before September 27, 1953.

For the penalties for selling meat at a price above the maximum, see Defence (General) Regulations, 1939, reg. 92.

Juries

JURIES ORDER, 1954 (S.I. No. 548): operative April 29, 1954.

As a result of the Electoral Registers Act, 1953, the date before which a rating authority must inform the electoral registration officer of the persons liable to serve as jurors in his area is altered to October 20; dates for objections, etc., are also altered.

London

LONDON TRAFFIC (FENNY SLADE HILL, POTTERS BAR) REGULATIONS, 1954 (S.I. No. 577): operative May 25, 1954.

No vehicle may overtake any other moving vehicle, except a pedal cycle or pedal cycles going in single file, on a prescribed part of Fenny Slade Hill, Potters Bar, on the route A.111. Fines not exceeding £5 for a first offence and £10 for a subsequent offence may be imposed for contraventions.

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 8 (S.I. No. 576): operative May 25, 1954; No. 9 (S.I. No. 622): operative June 1, 1954; No. 11 (S.I. No. 678): operative June 10, 1954.

Prescribed routes are detailed for South End, Selsdon Road and Bartlett Street, Croydon, at the junction of Nether Street with Ballards Lane, Finchley, and at the junction of Kensington Road with West Carriage Road, Hyde Park, Westminster. Fines not exceeding £5 for a first offence, and £10 for a subsequent offence may be imposed for contraventions.

LONDON TRAFFIC (PROHIBITION OF WAITING) REGULATIONS, 1954, AMERSHAM (S.I. No. 643); WOKING (S.I. No. 644): both operative June 3, 1954; NORTH WEALD AIRFIELD (S.I. No. 680): operative June 9, 1954.

Waiting is restricted in the High Street, Market Square and Broadway, Amersham, in a number of roads in Woking, and on part of the Epping–Ongar road between its junctions with Woodside and Kiln Lane. Fines not exceeding £5 may be imposed for contraventions.

Merchant Shipping

MERCHANT SHIPPING ACT, 1954 (COMMENCEMENT) ORDER, 1954 (S.I. No. 679) : operative July 1, 1954.

The provisions of the Merchant Shipping Act, 1954, which relate to the deductions to be made for the space occupied by the propelling power in measuring the tonnage of certain merchant ships, come into force on July 1, 1954.

Post Office

POST OFFICE (EXECUTION OF DOCUMENTS) WARRANT, 1954 (S.I. No. 574) : operative June 1, 1954.

The Warrant of 1951 (S.I. No. 1996) is revoked and replaced, some changes being made in the power of certain officials to sign instruments and documents on behalf of the Postmaster-General.

Probation

See PROBATION (SCOTLAND) AMENDMENT RULES, 1954, below, p. 563.

Public Health

See VISITING FORCES (APPLICATION OF LAW) ORDER, 1954, above, p. 558.

Road Traffic

SCHOOL CROSSING PATROLS ORDER, 1954 (S.I. No. 681) : operative July 1, 1954.

After July 1, 1954, a school crossing patrol will have power to stop traffic only if he is wearing a uniform approved by the Secretary of State.

Salmon and Freshwater Fisheries

DEVON RIVER BOARD (FIXED ENGINES) ORDER, 1954 (S.I. No. 657) : operative May 15, 1954.

The Devon River Board may, subject to the approval of the Minister of Agriculture and Fisheries, erect and work fixed engines, which would otherwise be illegal, for catching salmon or migratory trout for artificial propagation or other scientific purposes.

Scotland

Pest Control

IMPORTATION OF PLANTS (SCOTLAND) AMENDMENT ORDER, 1954 (S.I. No. 668): operative September 16, 1954.

This Order is similar to the English Order (S.I. No. 513; see [1954] Crim.L.R. 480) and makes the same provision as regards Scotland.

Probation

PROBATION (SCOTLAND) AMENDMENT RULES, 1954 (S.I. No. 623): operative May 16, 1954.

The salaries of probation officers are increased by £25 a year.

Sea Fisheries

SEA-FISHING INDUSTRY (IMMATURE SEA-FISH) AMENDMENT ORDER, 1954 (S.I. No. 687): operative July 1, 1954.

The minimum size below which the landing, sale or possession for sale of whiting in Great Britain is prohibited is raised to 10 inches.

Seamen

MERCHANT SHIPPING (REPUBLIC OF IRELAND) (CERTIFICATES OF COMPETENCY) ORDER, 1954 (S.I. No. 640): operative May 27, 1954.

Certificates of competency as master, mate or engineer, granted on and after September 1, 1953, by the proper authority in the Republic of Ireland have the same force as if they had been granted under the Merchant Shipping Act, 1894. The provisions of that Act, with certain modifications, apply to such certificates. The use, issue, delivery, cancellation and suspension of such certificates are regulated. On a proper demand any person who does not surrender such certificate is liable to a fine not exceeding £20 sterling.

Wireless Telegraphy

WIRELESS TELEGRAPHY (COLONIAL SHIPS AND AIRCRAFT) REGULATIONS, 1954 (S.I. No. 539): operative June 1, 1954.

The Order of 1954 (S.I. No. 488; see [1954] Crim.L.R. 481) is limited. Sections 1–5 of the Wireless Telegraphy Act, 1949, do not apply to stations and apparatus for wireless telegraphy on board British ships and aircraft when those ships and aircraft are for the time being in or over the colony, protectorate, state, country or territory in which or under the law of which they are registered or are within its territorial waters. When such ships or aircraft are outside these limits and outside the limits of the British Islands, a person using any station or apparatus commits no offence under sections 1 or 3 if such use is in accordance with the provisions of a valid licence for the use of the station or apparatus granted by the proper authority in the territory under the law of which the ship or aircraft is registered.

WIRELESS TELEGRAPHY (FOREIGN SHIPS AND AIRCRAFT) REGULATIONS, 1954 (S.I. No. 540): operative June 1, 1954.

The use of wireless telegraphy apparatus on board foreign sea-going ships or foreign aircraft within the limits of the British Islands and their territorial waters is regulated.

The penalty for contravention is a fine not exceeding £100. The apparatus in respect of which an offence is committed is liable to be seized and forfeited.

Letters to the Editor

Fitness to Plead

Sir,

With reference to your article on "The Trial of a Deaf-Mute," a similar point arose in *R.* v. *Pickstone* at Nottingham Assizes in November, 1953, before Mr. Justice Finnemore.

A man of over eighty years' old was charged with the murder of his wife. He was senile to the point of being insane, although he lived at home with his wife who was older than himself. The prosecution submitted that in that case the question of fitness to plead should be put to the jury first. The defence submitted that the general issue be tried first (referring to *R.* v. *Roberts* and *R.* v. *Berry*). Everyone appreciated the unfairness of the fact that if the prosecution's submission was upheld the prisoner would be detained as a Broadmoor patient during Her Majesty's pleasure as if he had been found guilty but insane.

In the event the judge held that the prisoner was entitled, if his advisers so desired, to have the general issue tried first and ordered a plea of Not Guilty to be entered. The result was that the jury returned a verdict of Not Guilty, on the direction of the judge, after the submission of counsel for the defence that there was no case to answer.

It is interesting to note that the learned judge was present at Cardiff Assizes taking the civil list when Mr. Justice Devlin tried the case of *R.* v. *Roberts.*

Mr. Justice Finnemore indicated that an alteration in the law was desirable so that a person found unfit to plead should be sent to an ordinary mental hospital and not to Broadmoor. However, the course the learned judge took was, with respect, the right one in this case. In any event, a defence of insanity could have been raised at the proper time if the submission of "No case" by counsel for the defence had failed.

Yours,
J. J. Deave,
Barrister-at-Law.

Temple, E.C.4.

[For article here referred to see page 20.—Eds.]

Books and Periodicals

Reviews:

Lie Detection and Criminal Interrogation. Third edition, by F. E. Inbau and J. E. Reid. London: Baillière, Tindall & Cox, Ltd. 1954. xi and 236 with 86 figs. and (index) 6 pp. (38s. 6d. net.)

As the title suggests, this book falls into two distinct parts. The first part deals exhaustively with the instrument we know as the "Lie Detector," and the techniques associated with its use. As far as this country is concerned, of course, this subject is really only of academic interest. For, although the prototype of this instrument was made in Lancashire in 1906 by a Scotsman, it is doubtful if such devices will ever find a place among our police techniques. Despite its British origin, it is now an American gadget. But then this is an American book, written for Americans by Americans, and so we need do no more than commend the extreme thoroughness of the explanation offered by its authors.

The second part, concerned as it is with criminal interrogation, comes a little nearer home. Here again, one must congratulate the authors on their thoroughness. Every possible thought that can usefully be entertained by a police officer bent on extracting a confession from a suspect is painstakingly presented and explored. Nor is the American legal background to interrogation overlooked in this edition, for the authors have brought the legal tale of decided cases right up to date.

Interrogation is, of course, a necessary part of police work everywhere. Theoretically, therefore, policemen ought to be instructed in this branch of their work. But is it a subject that is really capable of this form of teaching? Is it really useful, for example, in dealing with alibis, to tell the student of interrogation that the best way of determining the truth of an alibi is "to have an investigator go to the place stated by the subject and obtain information which will either substantiate or disprove the subject's contention"? The existence of a need for this sort of instruction indicates, surely, that the pupil is not yet, and is never likely to become, a policeman. It is rather like offering an aspiring civil servant instructions on how to use a pen, or even how to sit at a desk. The ability to interrogate successfully would appear to consist rather of a flair, highly developed by constant practice.

At the same time, it must be remembered that this book is written for the American reader. Perhaps the American police are not so well provided with training facilities as are the police in this country. Perhaps the American policeman finds himself working in an atmosphere of public regard quite unlike that in which our police work. Perhaps even the American police system tends to encourage the development of specialised interrogators who have neither the training nor the experience to qualify them, first and foremost, to be policemen in the widest sense of the word—indeed, the authors specifically recommend the introduction of criminal interrogation specialists.

Such characteristics might seem disastrous enough to the English reader, be he lawyer or policeman. But the underlying *motif* of the book is surely still more dangerous. Despite the disclaimer of the authors to the effect that they do not for one minute "intend to suggest that the police abandon or lessen their efforts as criminal investigators in favour of depending on criminal interrogations for crime solutions," there is a grave risk involved in raising the craft of asking questions to the level of an ordered science. This risk is the very one the authors so lightly dismiss—that the greater the importance accorded to the confession, the slighter the importance accorded to evidence in the ordinary sense. This shift of emphasis from evidence to confession which the authors claim is "highly improbable" is only too likely, and its consequences are only too dangerous.

That this shift of emphasis is an inevitable process which the law is powerless to hinder once it has started is proved conclusively by the very cases which are quoted in the legal section of the book. Here you can read of police interrogations which involved repeated and prolonged questioning of prisoners by relays of officers, suspects immured for several days in solitary confinement in dark cells, or put on short rations, prisoners shifted from county to county to avoid the service of a writ of *habeas corpus,* or taken from the jail and interrogated in nearby woods for several nights, confessions extracted by the police telling the suspect that unless he confesses he will be hanged, or shot, or thrown to the mob outside the jail, or induced by administering "third degree" to an accomplice in the suspect's presence, and so on.

The importance of the confession in the police state is common knowledge. This book at least shows us where over-emphasis on the confession can lead, in a country whose institutions are basically like ours. It is a warning.

C. W.

Shaw's Evidence in Criminal Cases. Fourth Edition. By Michael Lee, Barrister-at-Law. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 1954. li and 292 and (index) 18 pp. (22s. 6d. net.)

This is a useful little book for those who need to know the basic principles of evidence in criminal courts. Although the laws of evidence are in general the same in civil and criminal cases, the book deals only with the latter and draws on the wealth of material in decided criminal cases for its illustrations. One test of a book is to see whether the objects of the author have been achieved and maintained. An extract from the Preface to the second edition is printed in the front of the book in which it is stated that the object of the author is "to present a simplified account of a complicated and technical subject," and this the present editor has certainly achieved. The book contains a very readable and accurate account of the laws of evidence in criminal cases.

It does not pretend to be a book for the practitioner or the law student, but it is without doubt a valuable book for anybody who finds himself connected (otherwise than as a lawyer) with a criminal trial, whether as a justice, a probation officer, police officer, a witness or any one of the numerous classes of persons who in the society of today find themselves involved in any criminal cause or matter.

For the practitioner or law student, this book suffers from the defect of having no footnotes and therefore of citing only a few cases. This makes the book more readable, since the eye is not always travelling to the bottom of the page and back to the text, but places the editor in some difficulty. Is he to overload the text with cases at the expense of readability or omit the cases at the expense of authority? The editor of this edition seems to have struck a balance between the two evils. He has included more than seventy of the cases decided since the last edition in 1947 without in the least detracting from the quality of readability which has always been one of the characteristics of this work.

The new statute law since the last edition, which includes, of course, the Criminal Justice Act, 1948, and the Magistrates' Courts Act, 1952, has hardly impinged upon this branch of the law and has left unaffected the basic principles of evidence. But the new cases have necessitated certain alterations and rearrangements, in particular in the chapter dealing with the admissibility of evidence in respect of "similar facts." The recent cases of *Noor Mohamed* v. *R.* [1949] A.C. 182, *R.* v. *Armstrong* [1951] 2 All E.R. 219, *Harris* v. *D. P. P.* [1952] A.C. 694 and *R.* v. *Miller* [1952] 2 All E.R. 667 are all included in this chapter and the salient points dealt with in the introductory paragraphs. Specific offences are then dealt with one by one and examples given of cases where evidence of similar facts has or has not been admitted. This is an admirable chapter.

The book also deals fully with questions of admissibility, competency, burden of proof, depositions and examination of witnesses and has been brought right up to date. Many will profit (as this reviewer has) by reading it.

HENRY PALMER.

Forensic Medicine. Fifth Edition. By Douglas J. A. Kerr, M.D., F.R.C.P.E., D.P.H. London: Adam & Charles Black. 1954. xii and 350 and (index) 11 pp. (28s. net.)

"Commit a crime and the earth is made of glass" said Emerson. This may be brought about in no small measure, in certain types of crimes, through the practice of forensic medicine about which this book is written. It is described as a textbook for students and a guide for the practitioner and, while it might be presumed that practitioner means medical man, the book is equally valuable as a guide to legal practitioners. Its author, who is Regius Professor of Forensic Medicine in the University of Edinburgh, writes from his wide experience of the subject in a manner which is clear and to the point. The reader is not burdened with a list of rare details and improbable theories, for practical advice is the tenor of the work. This is particularly well shown in the opening chapter on poisons where the author says ". . . all that is required of a medical practitioner is that he should have a good knowledge of the general principles of diagnosis and treatment," which, with information on the commoner poisons, he proceeds to give.

Toxicology, which is usually looked upon as a separate branch of forensic medicine, is included in the general title and takes up approximately one-third of the book, and the law relating to poisons is adequately dealt with.

The remaining two-thirds of the book are devoted to a wide range of subjects. The introductory chapter containing a miscellany of information, and chapter two, dealing with the legal procedure in case of death, are particularly valuable to the newly qualified medical practitioner. Through succeeding chapters, which include such diverse matters as identification, wounds and injuries, sexual offences, insanity and criminal responsibility, the presentation is full and lucid without being ponderous. The illustrations, about two-thirds of which are from photographs, have been well selected to supplement the text, and are clearly reproduced. A comprehensive index makes for easy reference.

Professor Kerr has enhanced the value of this, the fifth edition of his *Forensic Medicine*, by taking into account some of the recent changes in the law, such as the Cremation Act, 1952, and the Coroners' Rules, the Poisons Rules and the Dangerous Drugs Regulations of 1953, which have come about since the last edition was published eight years ago. Even so a few points have escaped attention in the revision. The place of the National Health Insurance Act has been taken by the National Health Service Act; the relieving officer has given way to other officers, and as a further sign of the changing times the annual subscription for medical protection is now two pounds. It might also be questioned whether epilepsy is a form of insanity. These small criticisms do not, however, detract from the merit of a volume which might fittingly find a place on the bookshelves of practising lawyers as well as those of medical men.

JAMES A. HISLOP.

The Chemist and Druggist Poisons Guide. By W. A. Whatmough, B.SC., PH.C., F.R.I.C. London: The Chemist and Druggist. 1953. Volume 1, 89 pp., with Supplement, 8 pp. (20s. net.); Volume 2, ix and 220 and (index) 15 pp., with Addendum, 12 pp. (40s. net.)

The laws governing the sale, purchase and prescribing of poisons have now become so complex and have been subject to so many amendments that any reliable guide must be of the greatest service to those involved. The poisons guide published by the Chemist and Druggist is of such value because it produces adequate information as to the responsibilities and liabilities of sellers, prescribers and dispensers of poisons. The first volume produces at the beginning a key and classification which is simple to understand and use. With its aid any substance which may under certain circumstances be regarded as a poison can be classified into its category in relation to the various Acts, rules and regulations governing the subject. The main part of this volume is a comprehensive list of many thousands of drugs and preparations each with its code numbers which, when used with the key, immediately enables the substance to be placed in its correct category. No dispenser or seller of drugs can possibly keep track of the spate of synthetic drugs now being produced and without such a guide as this may find himself unwittingly guilty of an offence against the law. The essential value of the first volume is that it sets out clearly the status of any poison.

Volume 2, is a description of the poison provisions and explanations and is divided into five sections.

Section one gives a comprehensive classification of sixteen poison classes each with annotations as to the statutory provisions. The classes are so arranged that one can readily find the regulation governing substances so unrelated as Dangerous Drugs, Animal Medicines and Hair Dyes. There is in this section a description of the special provisions that apply in hospitals to the supply and storage of poisons. Sections two and three cover the important subject of Dangerous Drugs which includes the drugs of addiction and their control both in this country and by international agreement. Section four is devoted to showing the development of the poison laws from the Arsenic Act of 1851, the Pharmacy Act, 1852, the Pharmacy and Poisons Act, 1933, the Pharmacy and Medicines Act, 1941, and the modifying effect of the Poison Rules, 1952. In this section are the requirements for a person or corporate body to be an authorised seller of poisons with annotations referring each circumstance to its appropriate part of the relevant Act. Under the Pharmacy Acts is given an account of the powers and duties of the Pharmaceutical Society in enforcing the poison regulations. The machinery for this is concentrated in the disciplinary statutory committee whose powers and limitations are precisely stated. Also included is the constitution and function of the Poisons Board, an advisory committee serving as a link between the Home Office and trade organisations. The Secretary of State after consultation with the Poisons Board has the power to make rules relating to poisons. The rules of 1952 modifying the 1933 Act are given in detail. Accompanying Volume 1 is a supplement of additions and alterations to the extended list of poisons and to Volume 2 is an addendum giving the Dangerous Drug regulations of 1953. Anyone whose professional activities necessitate comprehensive or specific knowledge relating to the Poison Laws must regard these volumes as a necessity.

H. E. ARCHER.

A Concise Law Dictionary. Fourth Edition. By P. G. Osborn, LL.B., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 1954. vii and 399 pp. (17s. 6d).

Osborn's Dictionary has fulfilled and will fulfil a large need. For the young law student who must be constantly confronted by an array of words almost meaningless to him, this dictionary is an admirable companion. It will tell him enough about a word to enable him to read the textbook or article before him with understanding and yet at the same time it will not burden him with a variety of shades of meaning and conflicting definitions.

Yet the conciseness which will appeal to the newcomer will be a drawback to the buyer who seeks a more detailed definition. It must be remembered that this is a book for the law student and is to be compared with a "Bride's Cookery Book" rather than a "Mrs. Beeton." It is not intended (by its compiler at any rate, although its publishers suggest otherwise) for the practitioner. The latter, when looking for the definition of a word is concerned to find not so much a dictionary definition, compact and general, but rather a statutory or judicial pronouncement on the matter. Osborn in its conciseness does not go to such lengths and the practising lawyer, or the advanced student, will obtain little real satisfaction from its pages.

Although the dictionary traverses a wide range, nevertheless there are some surprising omissions. The curious student can find no enlightenment as to what is a "General" or "Special Commissioner," a "closing order" or a "parliamentary counsel" and although the dictionary contains some of the terms to be found in modern legislation there are no entries for such words as "ripe" and "near-ripe," and "appointed day." Although perhaps not words known to English law, the dictionary might well give space to some of the Scottish legal words such as "pursuer" which are frequently encountered in House of Lords reports.

Mr. Osborn in his preface to this edition suggests that any future edition might omit references to many of the old writs which became obsolete over 100 years ago. To do so would do a great disservice to the student as references to these writs are constantly encountered in the cases and textbooks. The same course is suggested in regard to the many Latin maxims which for the most part are translated rather than defined or explained. There are many newcomers to the law whose Latin is of the barest and whose ability to put Latin maxims into English, let alone translate their meaning accurately, is small. Perhaps a middle course could be adopted of including the writs and maxims in separate appendices, which would unburden the dictionary proper without depriving the student of a valuable means of reference.

DESMOND WRIGHT.

Archbold's Criminal Pleading, Evidence and Practice. Second Cumulative Supplement and Noter-up to the thirty-third edition. By T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. London: Sweet and Maxwell, Ltd. (Supplement free for 1954. Noter-up service, 7s. 6d. a year extra.)

This Supplement and Noter-up bring the book up to date to May 1, 1954. They contain notes of all important recent criminal cases, many of which have been reported in the Criminal Law Review.

Books Received:

"*Lifer.*" By William Doyle. London: Lowe and Brydon (Printers), Ltd. 1954. 238 pp. (12s. 6d. net.)

Guns, Drugs and Deserters. By Norman Phillips. London: T. Werner Laurie, Ltd. 1954. 176 pp. (12s. 6d.)

Eighteen Months. By Anthony Heckstall-Smith, D.S.C. London: Allan Wingate. 1954. 240 pp. (10s. 6d.)

Articles:

Canadian Bar Review, Vol. 32.
Medical privilege, p. 1.

Law Society's Gazette, Vol. 51.
The Queen's Coroners, p. 199.

Solicitor, Vol. 21.
Magistrates' notebook, p. 126.

Solicitors' Journal, Vol. 98.
Pedestrian Crossings Regulations, 1954, p. 381.

Law Journal, Vol. 104.
Corroboration of an accomplice, p. 308.
The black cap, p. 357.

Law Times, Vol. 217.
Road traffic: "special occasions" in England and Scotland, p. 283.

Justice of the Peace, Vol. 118.
Two bites at the cherry (dangerous and careless driving), p. 306.
Age without discretion (flexibility of the law), p. 307.
Illiterate delinquents, p. 323.
Complaint against J. Snooks (payment of costs), p. 337.
Parking lights and other matters, p. 353.

Police Review, Vol. 62.
Obscene literature, pp. 366, 388.
Manpower, p. 370.
Highway Act, 1835, ss. 72, 78, p. 390.

THE
CRIMINAL LAW
REVIEW

Editors
JOHN BURKE and PETER ALLSOP, M.A.
Barristers-at-Law

Editorial

New trials in criminal cases

A departmental committee, set up in December, 1952, under the chairmanship of Lord Tucker, on new trials in criminal cases, has now published its report.[1]

Evidence from other countries where the power to order a new trial exists was taken in addition to that from members of the bench, the bar, the Law Society and others in this country.

The main conclusions and recommendations of the committee were that the House of Lords and Court of Criminal Appeal should have power to order a new trial where the appeal is based on the grounds of fresh evidence but (Lord Tucker, Sir Travers Humphreys and Judge Bass dissenting) not on any other grounds. The power should not be exercised in respect of a count on which the accused was acquitted and no particular offence should be excluded from the power.

Provocation

On June 21, the Court of Criminal Appeal dismissed the appeal of Harry Bedder. He appealed against his conviction for the murder of a prostitute on the ground that the fact that he was impotent was not taken into consideration in deciding whether the words and acts of the woman were sufficient provocation to reduce the crime to manslaughter. Leave to appeal to the House of Lords was granted and the appeal was dismissed, reasons were not given before this issue went to press. We shall include a report of it in a future issue and also an article dealing with the question of provocation.

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[1] Cmd. 9150 [2s.].

Lawyer's latin

In this month's Glossary will be found instructions on how to pronounce latin barbarously as the lawyers do. The method adopted is anything but scientific but it has been tried out and produces results. Use of the glossary will enable non-lawyers to smile understandingly at such ripe old legal jests as the following: In the course of an action based on an alleged warranty on the sale of a cow the judge said to counsel, "Mr. O'Connor, has your client considered the maxim *expressio unius, exclusio alterius*? To which counsel made reply, "Indeed, my Lord, in the mountains of Connemara where my client dwells the peasants talk of little else."

Obscene publications

There have recently been a large number of prosecutions for publishing obscene libels. In one such case Stable J. delivered a notable summing up, which we print on page 593.

The Home Secretary does not consider that a committee to inquire into the law relating to obscene publications would serve any useful purpose, nor does he think it in the public interest to publish the list which is kept of books condemned by the courts in recent years. He would be reluctant to establish any form of centralised censorship or to limit the existing powers of the magistrates.[2]

Approved schools

The Home Office state that, as a result of a fall in recent times in committals of boys to approved schools, numbers of places in the schools have become surplus to requirements and it has been decided to close some of the schools. The schools to be closed are Saltersford School (senior boys), Tixover Grange (junior boys) and Church Stile (junior boys) and the annex to Desford School (junior boys). Notice of the surrender or withdrawal of the certificates of approval of the first named schools under section 79 of the Children and Young Persons Act, 1933, has been advertised in the London Gazette.

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[2] H.C. Debates, Vol. 529, col. 2320, July 8, 1954.

Dangerous and careless driving

A clerk to borough justices suggests that the confusion and possible injustice which may arise from taking two bites at the defendant under sections 11 and 12 of the Road Traffic Act, 1930, should be removed by creating a new offence of negligent driving. He proposes a new section to replace sections 11 and 12 and to take away a defendant's right to insist on trial by a jury, see p. 647.

Delinquency

The Institute for the Study and Treatment of Delinquency has arranged a summer school to be held at St. Hugh's College, Oxford, from September 18 to 25. The subject will be The Changing Attitude of Society towards Criminal Responsibility, and amongst the speakers will be Mr. R. E. Seaton, Mr. J. E. Hall Williams, Mr. John B. Mays and Dr. Portia Holman.

Scottish cases

We include in this issue a selection of Scottish cases which together with the Scottish Survey and Scottish Acts and Orders will cover the salient features of the criminal law of that country.

Homosexuality

The Home Secretary has announced that Mr. J. F. Wolfenden, C.B.E., Vice-Chancellor of Reading University, is to be chairman of the committee which is to consider the problem of homosexuality. The terms of reference of the committee are: to consider (a) the law and practice relating to homosexual offences and the treatment of persons convicted of such offences by the courts; (b) the law and practice relating to offences against the criminal law in connection with prostitution and solicitation for immoral purposes and to report what changes, if any, are in their opinion desirable.[3]

Contempt in a magistrates' court

The June issue of *The Justices' Clerk* reports an unusual occurrence at Blackpool. An accused brought before the committing magistrates threw, on one occasion a tin of powder and on another, a shoe at the bench. Had this happened in the

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[3] H.C. Debates, Vol. 529, col. 2319, July 8, 1954.

High Court a committal to prison would probably have been the immediate result, but as this is not possible in a magistrates' court the offender was remanded.

The futility of attempting to take the depositions in the presence of the accused, who would have to be handcuffed but could not be gagged, led the prosecuting solicitor to proceed by way of a Voluntary Bill under section 2 (2) (*b*) of the Administration of Justice (Miscellaneous Provisions) Act, 1933. The judge at assizes consented to the preferring of a bill of indictment, which included two charges of assault on the justices' clerk, and this came before quarter sessions at Preston. Here the accused shouted and swore at the chairman and was remanded for a month, when, on his reappearance, he repeated his behaviour. This time a jury heard the report of the prison medical officer and returned a verdict of "Mute of malice." A plea of Not Guilty was entered for the accused and the case for the prosecution was almost completed when the accused asked to be represented; this was allowed and the trial then concluded without further interruption. We included a report of a similar case in "An Australian Letter" ([1954] Crim.L.R. 274).

Wandsworth prison

The recent disturbance in Wandsworth prison has given rise to a number of questions in Parliament.[4] When the matter was debated on adjournment, Sir Hugh Lucas-Tooth gave a comprehensive review of conditions in the prison.[5]

Borstal girls

Borstal girls needing psychiatric observation and treatment are sent to Holloway prison, where there are proper medical, nursing and psychiatric services. Although he recognises there are disadvantages in this, the Home Secretary considers that the number of such girls is too small to justify setting up a special centre for them. While at Holloway their conditions are governed by Borstal rules.[6]

Magistrates' courts committees

The Home Secretary has relaxed to a certain extent the financial control which he exercises over the expenditure of magistrates' courts committees. Some control is still required, because of the necessity for economy, but Sir David Maxwell Fyfe does not think this hampers the committees in the proper exercise of their functions.[7]

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[4] H.C. Debates, Vol. 528, col. 903, May 31, 1954; col. 57, May 31, 1954; Vol. 529, col. 592, June 24, 1954; col. 1522, July 1, 1954.

[5] H.C. Debates, Vol. 528, cols. 1653 *et seq.*, June 4, 1954.

[6] H.C. Debates, Vol. 528, col. 1468, June 3, 1954.

Juries

The Home Office have issued Circular No. 143/1954, dated July 19, 1954, concerning the Juries Act, 1954 (p. 644). New scales of payment to jurors will be prescribed in due course, in the meantime the present scales remain in force.

Judicial appointments

Mr. W. A. Fearnley-Whittingstall, Q.C., has been appointed Recorder of the City of Lincoln.

Mr. Edward George Robey and Sir John Cameron have been appointed Metropolitan Magistrates in place of Mr. Rowland Thomas, Q.C., and Mr. W. Blake Odgers, Q.C., who have retired. Mr. Kenneth Barraclough has been appointed a deputy.

Mr. F. H. Cassels has been appointed deputy chairman of the County of London Quarter Sessions.

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[7] H.C. Debates, Vol. 529, col. *112*, July 1, 1954.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Arrest for Breach of the Peace

By Glanville Williams, ll.d., *Quain Professor of Jurisprudence in the University of London*

Apart from arrest for felony (*ante*, p. 408), the only power of arrest at common law is in respect of breach of the peace. Anybody may arrest for a breach of the peace committed in his presence or reasonably feared by him, provided that the arrest is made with sufficient promptitude.

What is a breach of the peace

The expression " breach of the peace " seems clearer than it is and there is a surprising lack of authoritative definition of what one would suppose to be a fundamental concept in criminal law. Of course, " breach of the peace " as a technical expression has a narrower meaning than the breach of the Queen's peace which is supposed to underlie every crime (*Grant* v. *Moser* (1843) 5 M. & G. 123 at 130). The most flagrant instance of a breach of the peace is a riot, and everyone may intervene to suppress the riot and disperse or arrest the rioters. The same is true of an unlawful assembly which has not yet become a riot. So also a fight between two or more persons is a breach of the peace; and both parties may be arrested, for the arrester does not have to decide the merits of the affair. As Parke B. said, " If no one could be restrained of his liberty, in cases of mutual conflict, except the party who did the first wrong, and the bystanders acted at their peril in this respect, there would be very little chance of the public peace being preserved by the interference of private individuals, nor indeed of police officers, whose power of interposition on their own view appears not to differ [at common law] from that of any of the King's other subjects " (*Timothy* v. *Simpson* (1835) 1 C.M. & R. 757 at 763).

There may be a breach of the peace without any general disorder. Thus a unilateral battery committed upon one who does not offer retaliation is a breach of the peace for which the offender may be immediately arrested (*Lewis* v. *Arnold* (1830) 4 C. & P. 354). The arrest may extend to others who were acting with the same common purpose: *ibid.* A man may arrest for a battery committed on himself (Hale, *P.C.*

ii 88; Hawkins, *P.C.* i Chap. 63, s. 15; *Coward* v. *Baddeley* (1859) 4 H. & N. 478). Even an assault in the sense of a threatened battery is a breach of the peace (Hale, *P.C.* ii 88–9; East, *P.C.* 306). Each of these instances involves some danger to the person, and it is submitted that this is the general meaning of a breach of the peace in criminal law. It has been held in America that wantonly discharging a firearm in a public street is a breach of the peace, as indeed is the mere act of going armed in public without lawful occasion and in such a manner as to alarm the public (*People* v. *Bartz* (1884) 53 Mich. 493; 19 N.W. 161). In England this situation is also covered by various statutes, such as the Statute of Northampton, 1328, the Metropolitan Police Act, 1839, s. 54 (15), the Town Police Clauses Act, 1847, s. 28, the Public Order Act, 1936, s. 7 (3), the Firearms Act, 1937, s. 6 (3), and the Prevention of Crime Act, 1953.

Threats of force

According to the American *Restatement of the Law of Torts*, § 116 Comment (*a*), a threat of criminal force against the land or chattels of another is sufficient to constitute a breach of the peace. It may be questioned, however, whether the English courts would go so far as this. Generally the threat of force against property (*e.g.*, by way of forcible entry on land) would involve a threat of force against the person, and would therefore amount to a threatened breach of the peace even on a narrow definition of that term. If there is no threat to the person, it seems that a threat to property should generally be regarded as insufficient. However, it may well be that a threat to attack a dwelling-house is looked upon with special severity, and so is always a breach of the peace if the attack is imminent. In *Ingle* v. *Bell* (1836) 1 M. & W. 516, an attempt forcibly to break into a house was held to be a breach of the peace; but the case is not a strong authority on the present point, because there may have been apprehension of personal violence if resistance were offered. On the other side of the line, the ruling of Parke J. in *Bright* (1830) 4 C. & P. 387 seems to be an undue restriction of the power of arrest. D came to O's house at night, demanding to see the maid-servant; O refused, and D stayed in the garden. O sent for P, a constable, and when P arrived D announced that if a light appeared at the windows, he would break every one of them. P thereupon arrested D, but this was ruled to be illegal, on the ground that there was no breach of the peace when D was taken into custody.

It is a curious commentary on our law of arrest that even at the present day the police have no statutory powers in such circumstances as occurred in *Bright*, except possibly in some towns under local legislation. There would be no power to arrest on the ground that the incident takes place at night, because the suspect has not yet committed an offence (so that the case falls outside the Prevention of Offences Act, 1851, s. 11), and the offence he intends to commit is not a felony (so that the case falls outside the Malicious Damage Act, 1861, s. 57). Nor would there be power to arrest under section 61 of the latter Act (because no offence is found being committed), nor under the Vagrancy Act, 1824, s. 4 (because the person arrested has no intention of committing a felony). Even the local legislation for London is so restrictively construed that it is doubtful whether the situation would be covered.

If the person of whom complaint is made has lawfully entered the house of another, his refusal to leave on the request of the occupier is not a breach of the peace. Such refusal gives cause for ejecting him, but not for arrest (*Green* v. *Bartram* (1830) 4 C. & P. 308; *Reece* v. *Taylor* (1835) 4 Nev. & M.K.B. 469; *Jordan* v. *Gibbon* (1863) 8 L.T. 391). However, if he attacks the occupier in order to resist ejection, this will amount to a battery, and there will be a breach of the peace for which an arrest is permissible.

Verbal disorderliness

Persons who are quarrelling by words only, without any threats of personal hurt, cannot be arrested without warrant at common law (Hawkins, *P.C.* i Chap. 63, s. 14). Nor is mere disorderliness like swearing sufficient to justify arrest; the arrester must suppose the person to be on the point of committing or actually committing a breach of the peace (*Lockley* (1864) 4 F. & F. 155). Continued pestering of a woman by a man is not a breach of the peace (*Dunn* (1840) 12 A. & E. 599).

Provocation

In general there is no ground for arrest at common law where the conduct of a person is such that it may provoke others to assault him. If an assault occurs, it will be the responsibility of the person making the assault, for the provocation will be no defence; consequently the force of the law must be directed against the assaulter, not against the provoker. The leading case is *Beatty* v. *Gillbanks* (1882) 9 Q.B.D. 308, where the facts were as follows: The Salvation Army was accustomed to hold Sunday meetings in Weston-super-Mare, and a hostile organisation, calling itself the Skeleton Army, was formed to break it up. It was held by a Divisional Court, on a case stated, that the leaders of the Salvation Army could not be convicted of a breach of the peace merely because of what the Skeleton Army might do to prevent them assembling. On this point the decision is clearly right, but it may be doubted whether the court paid adequate attention to what the Salvation Army itself was doing. According to the special case, the Salvationists were a terror to churchgoers, and used to fight and force their way through the streets. In *O'Kelly* v. *Harvey* (1883) 14 L.R.Ir. 105 at 111, Law L.C., after calling attention to the above fact, remarked: "I should have thought that this was no bad definition of an unlawful assembly." It is submitted that this comment is well founded and that what the Salvation Army did went beyond any rights of self-help (whether of self-defence or of abatement of the nuisance caused by the Skeleton Army in deliberately blocking the street), and rendered it an unlawful assembly. Since the definition of an unlawful assembly involves an actual or feared breach of the peace, it is an offence that always gives a power of arrest. It may be added that even where there is no power of arrest, measures short of arrest (such as dispersing the assembly) may sometimes be used.

Inflammatory words

Where A uses abusive language against B which may cause C to attack B, arrest of A may be justified. In one case, A, after abusing B in B's shop, went into the street outside and there continued to call B opprobrious names; a crowd collected and the street became obstructed; B sent for the police who, on A's refusal to go away, took him into custody. It was held that A was guilty of a breach of the peace and that the arrest was valid (*Cohen* v. *Huskisson* (1837) 2 M. & W. 477). Mere abusive words are not a breach of the peace, but here the gathering of the crowd coupled with the abusive language created an obvious danger of breach of the peace. The court further held that the arrest of A justified not only his temporary detention but also taking him before a magistrate. *Cf. Webster* v. *Watts* (1847) 11 Q.B. 311.

Noise

Making a noise is not in itself a breach of the peace, as where a man blows a horn in front of another's house (*per* Cresswell J. in *Grant* v. *Moser* (1843) 5 M. & G. 123 at 130). Where members of the Salvation Army marched through the streets making discordant noises and shouting " Alleluiah," being followed by a mob of 400 hostile persons who were also making a noise, the members of the Salvation Army were acquitted of " disturbing the public peace " within a local Act (*Beaty* v. *Glenister* (1884) 51 L.T. 304). Yet in *Crick* (1901) 65 J.P. 713, it was ruled at quarter sessions that a man who yelled and behaved like a madman in the street could be arrested for disturbing the public peace within a local Act. There is also authority for saying that where the noise is directed in a hostile manner against a particular person, there may be ground for an arrest. In *Baynes* v. *Brewster* (1841) 2 Q.B. 375, P kept rapping violently at D's door, threatening that he would continue doing so until P had delivered up a certain book; D summoned a policeman to arrest P, and P thereupon fled; D pursued him and arrested him. The arrest was held illegal unless, on the facts, P intended to repeat his illegal conduct and the arrest was made to prevent this repetition. The actual decision was upon the pleadings. The court was evidently prepared to say that an arrest to put an end to such conduct or to prevent its repetition would have been lawful, and this seems to involve the decision that the conduct was a breach of the peace, or at any rate was conduct so likely to lead to a breach of the peace as to justify an arrest. We shall revert to this case in its bearing on the time of arrest (p. 588). A later case, *Grant* v. *Moser* (1843) 5 M. & G. 123, does not carry the matter much farther. The question was there discussed, whether the persistent ringing of a doorbell could be a breach of the peace, but the actual decision was on a question of pleading; all that can be said is that the court expressed no dissent from *Baynes* v. *Brewster*. At the present day the position at common law is chiefly important where the arrest is effected by a private person, for where the door-knocking or bell-ringing takes place in a town it is frequently an offence under local legislation which gives the police power to arrest

(Metropolitan Police Act, 1839, s. 54 (16); Town Police Clauses Act, 1847, s. 28). Reliance may also be placed upon the power to arrest for insulting behaviour in a public place (Public Order Act, 1936, ss. 5, 7 (3)). Apart from such statutes, conduct that may lead to a breach of the peace is not in itself an offence, though the person responsible may be bound over (*Davies* v. *Griffiths* [1937] 2 All E.R. 671).

Obstructing officers of justice and public meetings

Halsbury's *Laws of England*, 2nd ed., Vol. IX, p. 86, states that obstructing a public officer in the execution of his duty is a breach of the peace. If this were true, it would give a large extension to the power of arrest without warrant. In fact, however, the only authority cited (*Spilsbury* v. *Micklethwaite* (1808) 1 Taunt. 146) does not support the statement. Mansfield C.J. there ruled that the sheriff presiding at a county court held for the election of knights of the shire could arrest one who interrupted the proceedings by making a disturbance; one reason given was that it was a court, and another was the importance of preserving the freedom of election. It will be seen that these reasons are limited to the facts of the case. The learned judge also thought that making a loud noise and disturbance in a public meeting was a breach of the peace, but there is authority the other way. In *Wooding* v. *Oxley* (1839) 9 C. & P. 1, Bosanquet J. ruled that mere noise and disturbance at a meeting, taking the form of crying "Hear, hear," putting questions to the speaker, and making observations on his statements, would not be a breach of the peace. Power of arrest in respect of the obstruction of public meetings is now given by the Public Meeting Act, 1906, as amended by the Public Order Act, 1936, s. 6. There is no statutory authority enabling the police to arrest without warrant a person who obstructs them in the execution of their duty.

The power of arrest

Reasonable but mistaken suspicion

If a person can arrest for actual or threatened breach of the peace, it would accord with common sense and the analogy of the rule for felonies to say that he can also arrest on reasonable but mistaken suspicion that the person arrested has committed or intends to commit a breach of the peace. This rule is supported by *Timothy* v. *Simpson* (p. 586) and *Light*

(p. 586). It is true that in *Baynes* v. *Brewster*, above, the court thought that an arrest was valid only if the person arrested actually intended to return to continue his unlawful behaviour; but the question of reasonable but mistaken belief was not considered.

It is further submitted that the restriction as to the reasonableness of the belief is relevant only if the person arrested sues in tort (which is the usual way in which the question falls for decision). Even an unreasonable belief should be a defence to a criminal prosecution for wrongful arrest.

The requirement of presence

Where an arrest is made for a breach of the peace that has already taken place, or is continuing, the breach must occur in the presence of the arrester (Hale, *P.C.* i 587; *Coupey* v. *Henley* (1797) 2 Esp. 540; *Curvan* (1826) 1 Mood. 132). Thus a constable who arrives on the scene after a fracas is over has no powers on his own account at common law, unless he fears a repetition. Even where he does not fear a repetition, he may, like any other citizen, lawfully aid a spectator of the affair who is endeavouring to make an arrest; and he may, with the authority of such spectator, do the whole work of arresting on the spectator's behalf (*Timothy* v. *Simpson* (1835) 1 C.M. & R. 757; *Derecourt* v. *Corbishley* (1855) 5 E. & B. 188), or take over a person already properly arrested (Hawkins, *P.C.* i Chap. 63, s. 17). Put simply, this means that the spectator may summon a policeman and give the culprit in charge. The "spectator" may, of course, himself be the victim of the assault which constitutes the breach of the peace of which complaint is made. Thus the victim of an assault can always give his attacker in charge, provided that he does so within the time allowed by a rule shortly to be considered.

If the constable has himself witnessed the affair, he can arrest those responsible even though the victim of the assault makes no complaint. This is now clear law, though the older authorities were in some doubt. (See the list given in *Timothy* v. *Simpson*, cited above.)

If a constable who did not himself witness the breach of the peace can find no onlooker who is willing to authorise an arrest, and if no repetition is feared, the constable will have to consider whether he can arrest under any statutory power; failing that, he must limit himself to endeavouring to find out the offender's name and address, with a view to a subsequent charge.

The meaning of "presence"

No explanation has been given why the power to arrest should be limited by the factor of presence, nor of the meaning of the word in this context. Evidently the rule is designed to exclude the case where the arrester is not on the scene at the time, and obtains his information of the breach of the peace only by hearsay. Suppose that he is physically present, but his back is turned at the time of the assault and he gets to know of it only by what he is told: is the crime committed in his presence? There is no English authority on this, but reference may be made to cases decided under statutes which allow arrest of persons "found" offending. According to these cases, which will be considered in a later article on statutory powers of arrest, the term "found" means "perceived through the senses." It is by no means certain that the same rule applies here, because to say that X found an offence being committed does not necessarily mean the same as to say that the offence was committed in his presence. However, it is assumed in American cases that for the purpose of the law of arrest the two formulas have the same meaning. (*Cf.* Perkins in (1940) 25 Iowa L.Rev. at 231–3.)

The meaning of "perceived through the senses" is further explained by the American decisions. The crime is committed in the presence of the officer who afterwards makes the arrest if it is directly perceived through his sense of sight, or even his sense of hearing. Thus if the officer hears a blow and screams in the dark, the crime of battery is committed in his presence though he does not see it; so also if he hears the noise in another room, and the noise stops when he enters (*State* v. *McAfee* (1890) 107 N.C. 812, 12 S.E. 435; *Ramsey* v. *State* (1893) 92 Ga. 53, 17 S.E. 613; *Dilger* v. *C'wealth* (1889) 88 Ky. 550, 11 S.W. 651). Although the American cases are not in full accord, the tendency is to hold that detection through the sense of smell is enough. Thus if an officer smells whisky being illegally distilled, or opium being smoked, the offence is committed in his presence for the purpose of enabling him to proceed to an arrest under statutory powers. See Ernest W. Machen, *The Law of Arrest* (Institute of Government, University of North Carolina, 1950), pp. 73–4. The question might arise in respect of common law arrest if the officer comes upon the spot after a shot has been fired but in time to smell the explosion of the gunpowder.

Time within which the arrest must be made

In addition to the requirement that the arrester must be present at the time of the conduct for which he arrests, there is a rule limiting the time during which the arrest may be made.

No difficulty arises if the arrest is for a continuing breach of the peace, or if, although the breach is over and done with, the arrester has reasonable ground for apprehending that the other intends to renew it. In one case, D came on P's premises and assaulted his servants who were erecting a wall: he was forcibly removed, and then again broke and entered the yard, getting upon the wall, and threatening to assault the servants; thereupon he was arrested. The arrest was held valid, both because the breach of the peace was continuing and because a renewal of the assaults was reasonably apprehended (*Timothy* v. *Simpson* (1835) 1 C.M. & R. 757, approved in *Price* v. *Seeley* (1843) 10 Cl. & F. 28).

It seems clear that there may be an arrest for breach of the peace which is reasonably apprehended in the immediate future, even though the person arrested has not yet committed any breach. Members of an unlawful assembly, for example, may be arrested, though the assembly is unlawful only by reason of what is feared for the future.

Apart from fear for the future, it is sometimes said that there can be no arrest for an affair that is all over; the arrest must be while it is still "continuing." See *Coupey* v. *Henley* (1797) 2 Esp. 540; *Bright* (1830) 4 C. & P. 387; *Cook* v. *Nethercote* (1834) 6 C. & P. 741; *Cohen* v. *Huskisson* (1837) 2 M. & W. 477; *Trebeck* v. *Croudace* [1918] 1 K.B. 158 at 164 (C.A.). In Archbold, 33rd ed., p. 1074, the statement still appears in this unqualified form. However, although it is still true as a general proposition, there is authority for an important exception, namely that an arrest is valid if made immediately after the breach (*cf.* Hale, *P.C.* ii 90). Thus an arrest immediately after an assault was upheld in *Lewis* v. *Arnold* (1830) 4 C. & P. 354. In *Derecourt* v. *Corbishley* (1855) 5 E. & B. 188, Coleridge J. said that if the person arresting saw the offence, and immediately arrested, this was an arresting at the time. In *Light* (1857) D. & B. 332 a drunken man knocked his wife down and jumped on her; then, in the presence of a policeman, he raised a shovel as if to strike her, using words implying danger to her life; for twenty minutes after he continued to use violent language towards his wife, and then left the house, professing an intention of going to his father's house to sleep. The policeman arrested him a few yards from his home as he was going from it. This was held valid. There was nothing to satisfy the policeman that he would not return, and if he did return the wife's life would have been in danger. Williams J. said: " A constable has authority, equally with all the rest of Her Majesty's subjects, to apprehend a man where there is reasonable ground to believe that a breach of the peace will be committed." Some dicta suggest the independent ground that the arrest was valid because sufficiently soon after the assault. Erle J. expressed it by saying that the assault was sufficiently close in time to come within the expression " recent."

The question is wrapped up with the purpose of arrest. If the only purpose of arrest is preventive, it can be justified only by fear of the future: in other words the arrest is merely for the purpose of restraining a man from violence. This was, indeed, the view formerly taken (*cf.* Co.Inst. ii 52). However, the present rule is that the arrest may be punitive, that is to say for the purpose of taking the offender before a magistrate to have him punished, or, at least, bound over (*Timothy* v. *Simpson* (1835) 1 C.M. & R. 757; *Cohen* v. *Huskisson*, above; *Derecourt* v. *Corbishley*, above). This being so, an arrest after the event should logically be upheld.

Even if the arrest is long after the battery, it will be valid at common law if the arrester believes that the victim is likely to die as a result of what has happened; for, if he dies, the blow will be felonious, amounting at least to manslaughter, and consequently the arrest is valid as an arrest on suspicion of felony (Co.Inst. ii 52; *per* Eyre C.J. in *Coupey* v. *Henley* (1797) 2 Esp. 540).

Exceptions apart, a stale arrest is unjustifiable, for there is no reason why a warrant should not be obtained. In *Walker* (1854) Dears. 358, D struck P, who went for assistance and returned with two police constables. D was from home, and in two hours they came back and told D to go with them to the station. It was held that the arrest was not lawful.

The rule needs to be remembered by police officers, who, if they wish to make an arrest under the common law power, must act with expedition. If the officer is called away, and cannot make an arrest at the time, his power to arrest disappears. The power to arrest for breach of the peace is limited to an emergency; when the emergency is over the power ceases, for there is nothing to stop the officer obtaining a warrant.

On the other hand, if the officer begins immediately to try to effect an arrest, and continues his efforts by giving chase or seeking the offender, he may make the arrest even though it be several hours later. He is not obliged to desist from the chase. This is because of the doctrine of fresh pursuit, under which a taking on fresh pursuit is equivalent in law to an immediate arrest (*cf. Howarth* (1828) 1 Mood. 207). If this is so, *Baynes* v. *Brewster* (p. 582) may be regarded as wrongly decided. The only possibility is to regard malicious door-knocking as not technically a breach of the peace, but perhaps as occupying an intermediate position, justifying an arrest for preventive purposes only.

Even where an officer has power to arrest without warrant on fresh pursuit, he may not always be wise to do so. The better course wherever possible is to obtain a warrant.

It must also be understood that although there are these exceptions under which an arrest is lawful for an affair that is past, there are no exceptions to the rule that an arrest for breach of the peace at common law must be by or under the authority of one who was present at the time. Thus an officer who was not present when the breach occurred must always obtain the express authority of a witness to arrest on the latter's behalf, unless of course he can justify arrest under some statutory power.

Statutory extensions of the power to arrest for breach of the peace

Although many statutes extend the power to arrest, comparatively few concern breaches of the peace, Parliament apparently having assumed that the common law power is generally adequate in this respect. The Offences against the Person Act, 1861, s. 66, gives extensive power to arrest at night, but it applies only to the gravest offences against the person, namely suspected felonies, present or future. There is no other provision in the Act for arrest; so that, to take an example, there can be no summary arrest for the misdemeanour of conspiracy to murder under section 4 of the Act, unless the conspirators have proceeded so far with their plan that its consummation is feared if action is not taken. In the latter event, the arrest would be valid at common law.

Certain powers of arrest are given by the Children and Young Persons Act, 1933, s. 13 (1), in respect of offences against the young. There is power to arrest a person found committing any indictable offence in the night (Prevention of Offences Act, 1851, s. 11). There is also a useful power of arrest under the Public Order Act, 1936, in respect of offensive conduct, provided that this occurs in a public place. Apart from these provisions, the only country-wide powers of arrest for breach of the peace concern offences involving explosives, firearms, and brawling in church.

Many provisions are to be found in town police statutes, but their interpretation is often a matter of difficulty on which there is no space to embark here. In London there is a clear and useful provision in section 65 of the Metropolitan Police Act, 1839, by which a metropolitan police constable may arrest any person charged by another person with an aggravated assault, if the constable has good reason to believe that the assault was committed and if it is not possible to obtain a warrant. The section expressly provides that the offence need not have been committed within the constable's view. It extends the common law in that the arrest need not take place immediately after the assault, and also in that the person who gives in charge need not have witnessed the assault; on the other hand the assault must be an aggravated one to fall within the section.

Arrest for other reasons

It was said at the beginning that there is no power of arrest for misdemeanour at common law except in respect of attempted felonies and breach of the peace. This view is supported by the great weight of authority and opinion, but there are some dissentients. The case of *Lawrence* v. *Hedger* (1810) 3 Taunt. 14 is still sometimes quoted for the proposition that a constable can arrest night-walkers, in the sense of prostitutes. In fact, however, the power to arrest night-walkers (which originally meant all those found on the streets at night) rested on a statute of 1331 (5 Edw. 3, c. 14), which is now repealed (*cf*. Hale, *P.C.* ii 89).

Another case sometimes cited is *Holyday* v. *Oxenbridge* (1631) Cro.Car. 234, where it was held that a private person could arrest a common cheat who gambled with false dice.

Hawkins (*P.C.* ii Chap. 12, s. 20) was prepared to generalise from this case so as to give a power of summary arrest for all offences "scandalous and prejudicial to the public." However, it seems clear that *Holyday* v. *Oxenbridge* is no longer law. It was held in *Fox* v. *Gaunt* (1832) 3 B. & Ad. 798 that there was no power of summary arrest for cheating, and again in *Mathews* v. *Biddulph* (1841) 3 M. & G. 390 that there was no power of summary arrest for attempting to obtain property by false pretences. It may be remarked that, even at the present day, no statute assists in the latter situation. Although the Larceny Act, 1916, s. 41, allows arrest for offences under the Act—including, therefore, an arrest for the misdemeanour of obtaining by false pretences—it does not allow an arrest for an attempt to obtain by false pretences, which is a misdemeanour not under the Act but by virtue of the common law doctrine of attempt.

Measures short of arrest on account of disturbance

At common law the police may interfere in some limited ways, even with an innocent person, for the preservation of order. The leading case is *Humphrey* v. *Connor* (1864) 17 Ir.R. 1, an Irish decision that has won approbation in English books. It was there held that a constable could commit what would otherwise have been an assault upon an innocent woman (taking an orange lily from her, which was causing offence to others), if that were the only way of preserving the peace. It seems that the constable would not have been justified in taking her into "protective custody" (*Connors* v. *Pearson* [1921] 2 Ir.R. 51); though one would suppose that even that may possibly be lawful in extreme cases, under the general doctrine of necessity.

Where a magistrate reasonably believes that the peace cannot otherwise be preserved than by dispersing a meeting, he is entitled to do so, even though no case for arrest has yet arisen (*O'Kelly* v. *Harvey* (1883) 14 L.R.Ir. 105).

Another case showing the wide powers of a constable for the preservation of the peace and to prevent unseemly disturbances is *Williams* v. *Glenister* (1824) 2 B. & C. 699. A constable detained a person who was disturbing divine service, and afterwards took him before a justice of the peace There was a statutory power to arrest persons wilfully and maliciously disturbing a preacher, but the person arrested in this case, though he created a disturbance, did so under a claim of right and consequently not "wilfully and maliciously." It was held that the constable's act in taking him before a justice of the peace was unlawful; but the court recognised that the detention during the continuance of the service, in order to prevent its disturbance (albeit without any legal offence in the disturber) was lawful. Since *Williams* v. *Glenister* was decided other statutory powers have been given which may justify an arrest for brawling in church under a claim of right (Ecclesiastical Courts Jurisdiction Act, 1860, s. 3; *Kensit* v. *Dean of St. Paul's* [1905] 2 K.B. 249).

Measures short of arrest to protect property

One of the most remarkable restrictions upon the power of summary arrest is in respect of malicious damage to property. This is generally only a misdemeanour, and a private person generally has no power to arrest for it. He can arrest at common law only if a breach of the peace is involved (and damage to property is not in itself a breach of the peace); and he can arrest under statutory powers only if the offence takes place at night or he acts under the authority of the owner (Prevention of Offences Act, 1851, s. 11; Malicious Damage Act, 1861, s. 61). Hence if I find a man with a hammer in the daytime breaking the windows of parked motor-cars belonging to people I do not know, I can probably as a matter of necessity restrain him from committing the offence, but I cannot arrest him for the purpose of taking him before a magistrate, and even a police constable cannot arrest him without a warrant, except under some local powers.

The only authority for allowing intervention short of technical arrest is a case of 1483 (Y.B. H. 22 E.4.45b, pl. 10), where Fairfax J. conceded that a mad woman might be temporarily imprisoned by a private person to prevent her from killing him or doing other mischief such as burning a house or other thing. The case appears in Rolle's *Abridgement*, p. 559, tit. Imprisonment (E) 1, 2, as authority for the proposition that "a man can imprison another to prevent apparent mischief which can ensue"; and Rolle is in turn cited in Halsbury's *Laws of England*, 2nd ed., Vol. IX, p. 87, with a cautious *quaere*. (The other authorities cited in Halsbury for the same suggestion are not relevant, since they concern larceny, which is a felony.) It is submitted that Rolle's doctrine is a sound one, provided that a real case of necessity is made out.

It seems that the power to detain ends as soon as the emergency ceases; but if there is no other way of ensuring that harm will not be done, the suspect must, presumably, be brought before a magistrate. If this is so, the emergency power may sometimes have the same effect for most purposes as a power to arrest.

Obscene Libel

R. v. Martin Secker Warburg, Ltd.

Stable J. delivered the following summing-up in *R.* v. *Martin Secker Warburg, Ltd.*, on July 2, 1954, where a publishing company and its managing director and a printing company were charged at the Central Criminal Court with publishing an obscene libel.

Stable J. Members of the jury, the verdict that in the course of this afternoon you will give will have a great bearing upon where the line is drawn between, on the one hand, liberty and freedom to read and think as the spirit moves us, and, on the other, licence which is an affront to the society of which each of us is a member.

I would begin by saying two things to you. First, you and you alone must decide this case and if, in the course of this summing-up, I express my opinion about the matter, you are entitled to ignore it.

The next thing I want to say to you is this: during the closing speech of the prosecution it seemed to me that there was, if I may say so without offence, a certain confusion of thought. It was suggested that you are, by what you decide today, to determine whether books like this will or will not be published in the future. May I venture to say that your task is nothing of the kind. We are not sitting here as judges of taste. We are not here to say whether we like a book of this kind. We are not here to say whether we think it would be a good thing if books like this were never written. You are here trying a criminal charge and in a criminal court you cannot find a verdict of "Guilty" against the accused unless, on the evidence that you have heard, you and each one of you are fully satisfied that the charge against the accused person has been proved.

This book, as I venture to think you will have already appreciated, is a book which obviously and admittedly is absorbed with sex, the relationship between the male and the female of the human species.

Now, approaching this matter which—let us face it—throughout the ages has been one of absorbing interest to men and women, you get two schools which are poles apart between which you have a variety of opinion and thought. At one extreme you get the conception, which I venture to think finds support in some of the teaching of the medieval church: that sex is sin; that the whole thing is dirty; that it was a mistake from beginning to end (and if it was, members of the jury, it was the creator of life who made the mistake and not you or I) and the less that is said about this wholly distasteful topic the better; let it be covered up and let us pretend it does not exist.

At the other extreme you get the line of thought which says that nothing but mischief results from this policy of secrecy and covering up, that the whole thing is just as much a part of God's universe as anything else and the proper approach to the matter is one of frankness, plain speaking and the avoidance of any sort of pretence.

And, I suppose, somewhere between those two poles the average, decent, well-meaning man or woman takes his or her stand.

The test of obscenity today is to be found in a decision of 1868, and it is this: whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.

Because the test was laid down in 1868, that does not mean that what you have to consider is, supposing this book had been published in 1868 and the publishers had been prosecuted in 1868, whether the court or the jury, nearly a century ago, would have reached the conclusion that the book was an obscene book. Your task is to decide whether you think that the tendency of the book is to deprave those whose minds today are open to such immoral influences and into whose hands the book may fall in this year, or last year when it was published in this country, or next year or the year after that.

Turning for a moment to the book that you have to consider, it is, as you know, in the form of a novel. Remember the charge is a charge that the tendency of the book is to corrupt and deprave. The charge is not that the tendency of the book is either to shock or to disgust. That is not a criminal offence. The charge is that the tendency of the book is to corrupt and deprave. Then you say: "Well, corrupt and deprave whom?" to which the answer is: those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.

What, exactly, does that involve? Are we to take our literary standards as being the level of something that is suitable reading for the decently brought up young female aged fourteen? Or do we go even further back than that and are we to be reduced to the sort of books that one reads as a child in the nursery? Members of the jury, the answer to that is: Of course not. A mass of literature—great literature—from many angles is wholly unsuitable for reading by the adolescent, but that does not mean that a publisher is guilty of a criminal offence for making those works available to the general public.

You have heard a good deal about the putting of ideas into young heads. Really, is it books that put ideas into young heads, or is it nature, when either a boy or a girl reaches that perilous stage in life's journey that we call "adolescence" and finds himself or herself traversing an unknown country without a map, without a compass, and sometimes, I am afraid, from a bad home, without a guide? It is the natural change from childhood to maturity that puts ideas into young heads. It is the business of parents and teachers and the environment of society, so far as is possible, to see that those ideas are wisely and naturally directed to the ultimate fulfilment of a balanced individual life.

I venture to suggest for your consideration the question what are the functions of the novel? I am not talking about historical novels when people write a story of some past age. I am talking about the contemporary novelist. By "the contemporary novelist," I mean the novelist who writes about his contemporaries, who holds up a mirror to the society of his own day. The value of the novel is not merely that it entertains contemporaries; it stands as a record or a picture of the society when it was written. Those of us who enjoy the Victorian novelists get such understanding as we have of that great age from chroniclers such as Thackeray, Dickens, Trollope and many others.

In the world in which we live today it is equally important that we should have an understanding of how life is lived and how the human mind is working in those parts of the world which are not separated from us in point of time but are separated from us in point of space. At a time like today when ideas and creeds and processes of thought seem, to some extent, to be in the melting pot and people are bewildered and puzzled to know in what direction humanity is heading, and in what column we propose to march, if we are to understand how life is lived in the United States, France, Germany, or elsewhere, the contemporary novels of those nations may afford us some guidance, and to those of us who have not the time, opportunity, money or inclination to travel, they may even be the only guides.

This, members of the jury, is an American novel written by a citizen of the United States, published originally in New York and purporting to depict the lives of people living today in New York, and to portray the speech, the turn of phrase and the attitude in general towards this particular aspect of life in New York.

Let me again remind you that the determination of this case is a matter exclusively for you. If you do not agree with any view that I may express, well, you do not agree with it; that is all, and your disagreement is paramount.

You may think that it is a good book, or a bad book, or a moderate book. It is at least a book. It is the creation of a human mind and it depicts people created by the author in the environment in which their lives were spent.

The theme of this book is the story of a rather attractive young man who is obsessed with his desire for women. It is not presented as an admirable thing, or a thing to be copied. It is not presented as a thing that brought him happiness or any sort of permanent satisfaction. Throughout the book you hear the note of impending disaster. He is like the drunkard who cannot keep away from drink although he knows where it will land him in the end. So far as his amatory adventures are concerned, the book does deal, with candour or, if you prefer it, crudity, with the realities of human love and human intercourse. There is no getting away from that, and the Crown say: "Well, that is sheer filth."

Is it? Is the act of sexual passion sheer filth? It may be an error of taste to write about it. It may be a matter in which perhaps old-fashioned people mourn for the reticence that was observed yesterday. But is it sheer filth? That is the question, members of the jury, you have to consider and ultimately to decide.

The book goes on to describe the pitfalls into which the unhappy adolescent, without knowledge or experience, without map, compass or the guiding hand of a wise parent or the example of a well-ordered, decent home, stumbles, and you will have to consider whether in this the author was pursuing an honest purpose and an honest thread of thought or whether it was only just a bit of camouflage to render the crudity, the sex of the book, sufficiently wrapped up to pass the critical standard of the Director of Public Prosecutions.

And there is another aspect of the matter which I should like you to consider before you come to your conclusion. I do not suppose there is a decent man or woman in this court who does not wholeheartedly believe that pornography, filthy books, ought to be stamped out and suppressed. They are not literature. They have got no message; they have got no inspiration; they have got no thought. They have got nothing. They are just filth, and, of course, ought to be suppressed. But in our desire for a healthy society, if we drive the criminal law too far, further than it ought to go, is not there a risk that there will be a revolt, a demand for a change in the law, so that the pendulum may swing too far the other way and allow to creep in things that as the law now stands we can exclude and keep out?

Members of the jury, that is all I have to say to you. Remember what I said when I began. You are dealing with a criminal charge. This is not a question of what you think is a desirable book to read. It is a criminal charge of publishing a work with a tendency to corrupt and deprave those into whose hands it may fall. Before you can return a verdict of "Guilty" on that charge you have to be satisfied, and each one of you has to be satisfied, that that charge has been proved. If the evidence falls short of that the accused are entitled to a verdict at your hands of "Not Guilty."

The jury returned a verdict of "Not Guilty."

Aspects of Forensic Science

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Typewriting

Within living memory it has been the practice to draw up all important documents in longhand, but the introduction just over seventy years ago and the steady improvement of typewriters has led to their practically exclusive use for official and business correspondence.

What might be termed the " forensic " examination of typescript is based upon certain broad principles. It depends upon the fact that once the realm of electrons, atoms and molecules is departed from, it is unlikely that there are even two absolutely identical objects in the world.

No matter how carefully such complicated pieces of mechanism as typewriters are built, some variation in dimensions and adjustment must occur and be reflected in the work of a machine even when it is brand new. Once a machine has been taken into service usage results in wear which affects the work produced. This not only serves further to differentiate it and its work from others, but this gradual increase in imperfections may be used as a time scale which may enable an approximate date to be given for the typing of the document, provided of course that dated specimens of work from the machine involved are available for comparison. Critical observation and measurement give to any typewritten document an individuality which distinguishes it from all others and reveals unmistakable evidence as to the machine which produced it and even indications as to the hand which typed it.

The preliminary laboratory examination of typescript is usually concerned with the determination of the make of machine, style of type and probable age of the typewriter used. In the case of the investigation of the source of anonymous letters, this information often serves to narrow the field of investigation and when a forgery is suspected such information as to make and age may establish that the machine or the style of type involved was not manufactured until after the date at which the document was supposed to have been drawn up.

Determination of make and age of machine

The determination of the make of typewriter used depends upon the fact that the type fitted to a particular make of machine is often peculiar to that make and is distinguished from others in the details of its design.

To carry out the determination of make and age of the machine, the typescript of a questioned document must be compared with that derived from machines of known date and manufacture, but whilst this is very simple in theory, in practice it has often proved difficult and in some cases impossible to carry out successfully. There are several reasons why this is so.

In the first place the establishment of a collection of standard type styles which is sufficiently comprehensive to enable about 98 per cent. of identifications to be carried out has proved to be no easy task and continuous effort is needed to keep it up to date as new machines and styles of type are being put on the market. Not only are there many makes of typewriters in use—some by manufacturers who have long gone out of business—but many of the larger concerns supply alternative styles of type for their machines. Some firms list up to eighty styles of type and are also willing to cut type to any special design which may be submitted to them. Furthermore, from time to time slight modifications in design intended to improve legibility, appearance or ease of manufacture are introduced.

For example, during the past thirty years, the Pica style of type manufactured by Remington, Underwood, L. C. Smith and Royal, has undergone modification on 8, 8, 5 and 5 occasions respectively and whilst such modifications are of value when a limit of age has to be given to a specimen of typescript, they add to the difficulty of assembling a worthwhile collection of reference material.

A second difficulty is that not every name which a typewriter may bear is represented by a distinct style of type. Many groups of machines bearing different names are actually fitted with identical type. Very often these different names merely represent the various descriptions under which what is essentially the same machine is sold at different times or in different countries.

A third difficulty is encountered when the work of machines with very defective and worn type, or which have been extensively repaired with "foreign" type, is encountered and in such cases it may very well prove impossible to gain any reliable indication as to the make of machine responsible.

Determination of actual machine

Once the make of machine has been established the way is clear for the detailed comparison of the questioned typescript with specimens taken from machines of the same make and style of type with a view to discovering the actual machine used.

Owing to the steady improvement in the quality of the metal of which the type faces are made, broken characters rarely occur on modern typewriters; the most that happens is that one or possibly two of the characters have broken or worn serifs—the short strokes which occur at right angles to the ends of the main strokes which make up a character.

It is rarely that two or more specimens of typescript exhibit sufficient broken or badly worn characters in common to enable the probability of their having been typed on the same machine to be established so that in practice far less obvious, but more frequently occurring characteristics have to be relied upon.

In spite of the care taken by manufacturers, no typewriter ever comes from the factory with all its characters perfectly aligned and even if such perfection were possible, wear and usage and, in particular, cleaning, soon have their effect.

Ideally, characters should be aligned both horizontally and vertically; vertical strokes, except when allowed for in the design, should be exactly upright and the strength of the impression should be even throughout the character.

Every character printed by a machine may be identified by its departure from perfection in these respects. Typewriters are usually fitted with about eighty-eight characters and approximately fifty of these are in fairly constant use. If each of these fifty characters is examined for the existence or non-existence of obvious and consistent errors in respect of but three of the above-mentioned four kinds of misalignment, then the number of permutations runs into many thousands of millions. In practice this figure is subject to severe modification because of the looseness and consequent variation which wear produces in the work of an old machine and also by the fact that a woven ribbon rarely reproduces a perfectly clear-cut impression of the type face. But if sufficient typescript is available all these aberrations can be allowed for.

From the foregoing it follows that the odds against two machines producing typescript with identical alignment errors are very great indeed.

Where reasonable amounts of well defined typescript are available, the task of comparison is easy, but when the investigation is limited to a line or so of typescript and a worn ribbon or, worse still, poor quality carbon paper is used, the comparison may demand the judgment which only comes with experience and on occasion there may be insufficient evidence available to justify any definite expression of opinion as to whether or not two small specimens of indistinct typescript were typed on the same machine or not.

Presentation of evidence in court

In cases where additions have been made to typewritten documents and a different machine has been used, it is usual to show enlarged photographs of those characters in the added portion which differ in design or have different alignment characteristics from those in the main body of the document. An enlargement of about three times is usually quite sufficient to make the point.

Similarly, to demonstrate that two documents were typed on the same machine enlarged photographs of words taken from the two documents are placed in juxtaposition so as to demonstrate not only that there are numerous errors in alignment, etc., common to the typescript of both documents, but that there are no significant differences which are not capable of reasonable explanation, such as the use of a faulty ribbon, etc.

Where a document has been forged by having additions typed on to it by the same machine the demonstration follows a different course. Here the enlarged photographs of the document which must include portions of the original as well as the alleged additions are marked with guide lines. These show how what is alleged to be the additional typescript is misaligned with respect to the original contents of the document. This can be done because it is a matter of extreme difficulty to reinsert a document into a machine so as to restore the original alignment in all respects.

It must be emphasised that detailed comparison of two specimens of typescript merely serves to indicate the origin of a typewritten document, not the identity of the typist, but in many cases this may be sufficient for the purpose. For example, during the extreme shortage of goods for the home market there were many instances of the diversion of such materials from the export trade and in a number of cases documents purporting to come from abroad were actually drawn up on typewriters in this country. Proof that this was so was easily obtained once suspicion was aroused. Fraudulent claims on insurance companies following arson have also been exposed by proving that receipts for goods alleged to have been burned and which were supposed to have been bought from a number of different firms were shown to have been typed on machines in the possession of the claimants. A rather unusual example was a successful prosecution for receiving, where a recovered stolen typewriter which bore a false number was identified by comparison of its work with that in the possession of the firm from whom it had been stolen.

Identity of typist

It is often possible to select from a number of specimens of the work of different people, those done by the same typist, even if they all use the same machine. Such selection, which is rarely capable of anything like strict proof but which on many occasions has served to direct the investigation into the right channels, is due to the fact that different typists usually have different touch and style—style of course referring to the setting out of the work with respect to margins, punctuation and the use of abbreviations, etc., and it is on these features that the investigation is based.

Erased typescript

When typewriting has been thoroughly erased it is usually impossible to decipher or restore what has been rubbed out, but if carbon copies exist it is often possible to select the correct carbon copy. This is due to the fact that punctuation marks are so deeply impressed into the paper that a depression remains even when the colouring matter has been completely erased. If a sheet of tracing paper or, better still, celluloid is placed over the erasure and the positions of impressions due to punctuation marks indicated by small circles, then this marked sheet serves as a template which enables a rapid search to be made among the carbon copies.

This proved of great assistance when a fraudulent list of bank credits was typed on bank notepaper over a genuine signature of the manager, after erasing the original communications. It proved impossible to decipher what had been erased so a template was made as described above and the carbon copies at the bank were rapidly gone through until the carbon copy of the original letter was found by the matching of the punctuation marks. This proved to be a valuable link in the chain of evidence in a subsequent prosecution for forgery.

The foregoing account of some of the features of typescript which are significant when a typewritten document is questioned is by no means exhaustive. The majority of the statements made refer to general principles only and circumstances may occasion considerable modification.

Again nothing has been said about the influence of the ribbon and of the many mechanical defects to which hard-used typewriters are subject, but it is hoped that what has been dealt with will afford some indication as to the principles which govern the examination of a questioned typewritten document.

Forgery of a Log Book

By Michael Scott, LL.B., Solicitor

With more motor-vehicles taking the roads every month, it is somewhat surprising that there appears to be no legal authority upon an important matter relating to the log books which go into circulation with them. The question is this: Is a log book a document of title to goods for the purposes of the Forgery Act, 1913? The punishment for persons convicted under section 2 (2) relating to such documents is different from the punishment of those convicted under section 4 which catches documents not comprised in the preceding sections; moreover offences against section 2 (2) are felonies while those under section 4 are misdemeanours; there are also differences in the courts for the trial of the two offences. It is clear therefore that this question is of practical value.

It is first to be observed that the definition of a document of title in section 18 of the Forgery Act, 1913, follows precisely the corresponding definition in the Factors Act, 1889, s. 1 (4) and this definition is also to be found in the Larceny Act, 1916, s. 46. By this definition "the expression 'document of title' includes any bill of lading, . . . dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods . . . or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented. . . ."

Since log books came into use only after Regulations under the Finance Act, 1920, took effect in 1921, it is evident that they can fall within this definition only if they come under the "any other document" part of the definition, that expression being of course, construed as *ejusdem generis* with the commercial documents there mentioned. It is interesting that the question whether a log book comes within this definition has been raised in recent cases involving the Factors Act and it is necessary to consider the views of the judges in four of those cases before turning to the position under the Forgery Act itself.

Joblin v. *Watkins & Roseveare (Motors), Ltd.* (1948) 64 T.L.R. 464

This was a case where the plaintiff made a loan of £275 to a person from whom he took as security a log book and a post-dated cheque for £300. The borrower had no right to the car covered by the log book and the plaintiff could eventually obtain neither money nor car on his documents. He therefore sued the owners of the car, alleging under the Factors Act that the borrower had been a mercantile agent in possession of a document of title and thus able to give a good title. Croom-Johnson J. heard the case and began his judgment saying : " This is a hopeless claim. The documents signed by Mr. Smith (the borrower) on November 4, 1945, were a mere device by Mr. Smith to enable Mr. Smith to obtain temporary financial accommodation for one month. The true nature of the transaction was a loan." The case, therefore, did not fall within the Factors Act at all as that is limited to " a sale pledge or other disposition " and that was sufficient to dispose of the case. The judge in deference to counsel's argument, added that he did not consider Mr. Smith was a mercantile agent nor was the log book a document of title.

He gave his reasons for the latter view, saying that the primary purpose of the log book is to show who is the person liable to pay the road fund licence tax in respect of the vehicle. He added that the reasons why a wise purchaser asks for the handing over of the log book with the car are in order (i) to indicate what right the seller has to be dealing with that motor vehicle, (ii) to show when its licence fell due and what the position is, generally, about it; and (iii) to show that it is a registered vehicle. The judge further said that in his view " document of title " means a document by which a person who puts it forward is entitled to dispose of the goods. Now it appears with respect that the first of the reasons given above is virtually an acknowledgment that the log book is in practice a document of title—it " indicates what right the seller has to be dealing with that motor vehicle " and the fact that it serves other excise purposes does not matter. Further, it is submitted that the definition suggested by Croom Johnson J. of " document of title " needs to be qualified by the provision that the person with the document also has the goods. However, the important point is that this case has been quoted in the textbooks and in the head notes to the reports as an authority for the proposition that a log book is not a document of title for the purpose of the Factors Act. Examination of the case shows that this point was not essential to the decision and on recognised principles, it is submitted that the remarks on the log book are strictly *obiter*.

Bishopsgate Motor Finance Corporation, Ltd. v. *Transport Brakes, Ltd.* [1949] 1 K.B. 322

In this well-known case the issue was whether the defendants could make out a defence based on the Sale of Goods Act, 1893, s. 22, to a claim in detinue for the return of the car. In other words, they sought to show that they had acquired a good title to a car, admittedly disposed of without lawful authority from the owner, by reason of its sale " in market overt according to the usage of the market." Humphreys J., who tried the case, was able to give judgment for the defendants without making any reference to the effect of the log book. Indeed the main question for the judge was whether the sale by private treaty after the car had been publicly auctioned, constituted a sale in market overt and this point, on the evidence, the judge decided in favour of the defendants.

On appeal, the decision of Humphreys J. was upheld and while the status of a market overt established by statute was a little more fully discussed than at first instance, the grounds of the decision were that the sale had been in " market overt according to the usage of the market " and thus the defendants acquired a good title. As two of the judges referred to the log book, it will be worth while to consider the three judgments briefly. Bucknill L.J. treated fully various points raised on whether there was a market overt, on the significance of the payment of tolls and so on in the body of his judgment and only referred to the log book when he was considering the proviso to section 22 (1), *viz.*, " the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller."

On this point Bucknill L.J. mentioned that the seller's name was entered in the log book and he quoted from Croom-Johnson J. in *Joblin's* case about the primary purpose of the log book. He made no comment of his own however, and as the log book had been correctly brought up to date by the seller, it revealed no defect of title. Singleton L.J. did not refer to the log book, stating that the two questions at stake were: Was it a sale in market overt?; and Was it according to the usage of the market? He answered both in the affirmative after dealing with several authorities on market overt. Denning L.J. also delivered a separate judgment and gave his reasons for agreeing that the sale was in market overt. He then observed that the buyer's protection existed only in so far as he buys in good faith and without notice of defect of title and he proceeded to offer a few observations on the log book in its relation to this requirement. "The registration book of a car, or the log book as it is called may not itself be a document of title, but it is the best evidence of title. The transfer of the log book does not itself transfer the property in the car. The property, as a rule, is only transferred by sale and delivery, but a transfer is open to suspicion unless the log book is handed over. The wise buyer insists on it in order to be sure that the seller is the owner and that the car may lawfully be on the road. If the log book is not produced or if it contains the name of a third person as the owner, or if it has been obviously tampered with, the buyer is immediately put on inquiry."

This passage conveniently describes the use made of the log book in connection with the sales of motor vehicles and it will be noted that Denning L.J. did not finally close the door on the question whether a log book was a document of title and the Factors Act definition was not before the court. It is submitted that the views on the status of a log book expressed by Denning L.J. and very briefly by Bucknill L.J. were no part of the *ratio decidendi* of the case which was simply as expressed in all three judgments that there was on the facts, a sale in market overt according to the usage of the market.

Pearson v. *Rose and Young, Ltd.* [1951] 1 K.B. 275

In this case a fraudulent salesman secured possession of the plaintiff's log book by a trick and used the book to sell the plaintiff's car which was in the salesman's possession by consent. The salesman was a mercantile agent within the Factors Act and the question for the court was whether a good title had been passed to the defendants in whose possession the car was at the time when the plaintiff sued for its recovery. Devlin J. had found for the defendant on the ground that as the salesman had possession of the car with the consent of the plaintiff he had all that was necessary. The Court of Appeal reversed this decision on the ground that the sale of the car without its log book would not be a sale of goods " in the ordinary course of business " within section 2 (1) of the Factors Act, and that the consent necessary to pass a good title to the car under that section was a consent to both possession of the car and its log book. Here, there had been no consent to the possession of the log book. Somervell L.J. said that a log book was not a document of title, adding that the relationship of a log book to the car was one to which no useful analogy had occurred to him. He did hold, however, that sale of a car without its log book would not be a sale " in the ordinary course of business."

Denning L.J. also dealt with the log book, referring to the *Bishopsgate* case. He then said: " It is not a document of title, but it is the best evidence of title . . . you cannot give or obtain a clean title unless you have the registration book. . . . If the seller can produce the book showing that his title is in order, he will receive the proper market price." A little later he summarised the position under the Factors Act: " Goods in the Act means the car together with the registration book." Vaisey J. in a shorter judgment added the view that a car sold without a log book was no more sold " in the ordinary course of business " than a car with only three wheels would be. In the result, although two of the judges said that they did not consider the log book to be a document of title for the purposes of the Factors Act, they agreed that it was in practice a necessary part of a seller's title to the car. This nice distinction it would seem, stems from the desire of the judges to enforce the spirit of the Factors Act. Croom-Johnson J. had said in *Joblin's* case that the purpose of the Act was to enable a good title to be passed but in *Pearson's* case it would have been inequitable if the fraudulent salesman had been able to pass a good title. By insisting on the log book as an essential part of the " goods " to be passed, the court was able to uphold the original owner's title. For this purpose, it was not necessary that the log book should have been a document of title with the meaning of the Act.

Du Jardin v. *Beadman Brothers, Ltd.* [1952] 2 Q.B. 712

Here again the title of an innocent purchaser of a motor car was in question. By a trick, the consent of the owner was obtained to part with both car and log book and Sellers J.

followed *Pearson's* case by holding that a good title had been passed. The judge referred to what Atkin L.J. had once described as the logical absurdity that at one and the same time, a person could commit larceny by a trick in taking the goods without the consent of the owner, and also be entrusted with the goods by the owner for the purposes of the Factors Act. Suggesting that the artificiality involved in this position lay with the criminal law rather than the civil law, Sellers J. had no hesitation in finding that both those legal effects had occurred. The status of the log book was impliedly accepted as described in *Pearson's* case.

The result of this necessarily brief review of the four cases above is that in two of them, the question whether a log book is a document of title within the Factors Act, 1889, was found to have been dealt with as *obiter* only. In *Pearson's* case, car and log book were together treated as goods and there was no discussion of the expression " document of title " save by Denning L.J. and in *Du Jardin's* case, while *Pearson's* case was followed no discussion of the status of the log book *vis-à-vis* the Factors Act definition was involved.

The criminal law

Turning now to the Forgery Act, it has been pointed out that the definition of " document of title " in section 18 is identical with that in the Factors Act. It is the contention of this article that despite the civil cases mentioned above, there are good grounds for treating a log book as a document of title for the purpose of the Forgery Act. In the first place, the purposes of the Act are quite different. The Factors Act is concerned with the desirability in commercial dealings of enabling certain persons to pass a good title. The Forgery Act is concerned with the making of false documents in order that they may be used as genuine. For the purposes of the Factors Act it is undesirable that the person able to acquire, possibly fraudulently, possession of a log book, should be able to pass a title to the car described on it. From the aspect of criminal law, however, a log book is such an essential part of a person's title to his car that it is in fact a document showing his title to it. It is in practice the only document asked for and its forgery is the effective step needed to transfer a car dishonestly. Secondly, on the prima facie interpretation of the definition in the Forgery Act, a log book is " a document used in the ordinary course of business as proof of the possession or control of " a motor vehicle. In a recent unreported case at assizes with which the writer was concerned, Gerrard J. was able to uphold a submission that a log book was not a document of title to goods within section 2 on the ground that he had received no evidence about the ordinary course of business among car dealers. This, of course, left the question open where such evidence is available. Thirdly, it may be considered a point against the contention of this article, that the Vehicles (Excise) Act, 1949, s. 21 (*b*) makes it an offence to forge a log book. However, though that provision may be the recognition of a legislative doubt about the effect of section 2 of the Forgery Act, it is submitted that it may be regarded merely as the creation of a summary offence carrying a light punishment whereas section 2 under discussion is appropriate for serious cases of forgery. There have been other instances where different interpretations of the same facts have been given in civil and criminal courts, and in this case on grounds of construction and commercial practice, it is urged that the criminal courts have no fetter upon their treating log books as documents of title to goods for the purposes of the Forgery Act.

A Day in a Police Court

By A. E. JONES
Magistrates' Clerk

The series of which this is the eighth instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Remands

Domestic interlude

Remands, like charges, progressed from minor to major, but no case was trivial to the persons concerned in it. Leslie Palmer, whose name was called first, had been arrested four weeks previously because he had failed to make the maintenance payments due to his wife under an order of the court. His wages as a builders' labourer averaged about £6 10s. 0d. a week and out of this he was supposed to pay 25s. a week for his wife and 15s. a week for each of his two children. The arrears amounted to £38 5s. 0d. now. All through the four years since the making of the order there had been a regular cycle in his payment record : he would start missing weeks; his wife would take proceedings; Mr. Sutterthwick would threaten the utmost rigour of the law if he did not pay regularly; he would pay regularly for a time with a small sum each week off the arrears; the case would be adjourned *sine die*; after a while he would start missing payments again; and then his wife would take proceedings afresh.

" She's sworn she'll drag me down to the gutter over this, sir, and she won't be happy till she sees me in gaol " he had complained when he appeared before the court last time.

Now Frell, the clerk, consulted his notes and the account sheet for the case and said : " This man, sir, paid half a crown a week off the arrears for the first fortnight of the remand, but he's paid nothing at all these last two weeks."

Leslie Palmer did not wait to be asked the reason for this default. He had a perfect answer this time. " I've been off sick, sir. Here's the doctor's certificate," he said triumphantly. The paper was handed up to the magistrate who, after looking at it from various angles, passed it down to the clerk with a questioning raise of his eyebrows. Frell tried holding it very close to his eyes and then well away from them, but in the end he had to hand it back with a shake of his head.

" Do you know what's the matter with you? " Mr. Sutterthwick asked the defendant.

" I'm gastric, sir."

" Oh," said the magistrate, " I should never have guessed that from this certificate. What money are you getting while you're off sick? "

" Only the National Insurance, sir. I couldn't manage at all if my landlady didn't trust me to pay her when I get back to work."

The magistrate turned to the complainant who stood in the witness box expressing silently her disbelief and resentment.

" There doesn't seem much I can do except remand the case again and hope that he'll get back to work in the meantime," he said.

" But what am I to do, sir? " she rejoined. " I'm not really well myself, but I have to go on working. I don't believe he's as bad as he makes out. And he does private work. He still has plenty of money to spend in pubs."

"I don't drink or smoke," broke in the defendant indignantly. "The doctor's forbidden it."

"I've got witnesses to prove it," said the woman sullenly.

"I must have regard to the doctor's certificate," said Mr. Sutterthwick, "even though I can't read what he's written. Actually I can read his name and the fact that your husband is unfit to follow his occupation, because that's all printed. I'm very sorry for you, but it's the old story of not being able to get blood out of a stone."

"That landlady he talks about is only the woman he's living with," sneered Mrs. Palmer. She wasn't going to let her husband "get away with it" without at least being "shown up."

"That isn't evidence of means," said the magistrate.

"I don't see why she should have his money. I'm his wife, not her," persisted Mrs. Palmer.

Mr. Sutterthwick turned to the defendant. "The probation officer will make some inquiries into your position," he said with a glance at Thorburton, who nodded acknowledgment of the task. "In the meantime you're remanded for three weeks on your own bail of forty shillings. You needn't come next time if you're back in work and have started paying by then. I don't want you to lose time. If you haven't started paying I shall expect you to come and give your explanation."

"Thank you, sir," said Palmer, "But what about the arrears that are piling up while I can't work."

"I'll see about that when you get back to your job and start paying," said Mr. Sutterthwick. "But don't forget your wife is having to keep herself and the children in the meantime. She may have to borrow to do that, and she'll be expected to pay her debts. Why shouldn't you?"

The man had an answer to that and the woman was overflowing with comments, but the magistrate had heard enough for the time being. "Next case, please," he said.

Probation

With remand No. 2 the court was back to crime. May Small had, a week previously, consented to be dealt with summarily and pleaded guilty to the theft of a suitcase, a ring, a camera, two sheets, four pillow cases, a frock, an overcoat and a tablecloth, value together £28, from the furnished room where she had stayed for a fortnight. She was not alone in the affair though she stood alone in the dock. The man she had been living with had left her before her arrest and had not yet been traced by the police. She had been found wearing the stolen frock and overcoat and having in her possession the tickets for the other articles which the man had pawned.

Mr. Sutterthwick had been told by the police last week that May Small had never been in their hands before and was a married woman aged 32 who, when single, had worked in a laundry. She had left her husband for the other man and had spent in all about three months flitting from one furnished lodging to another with him.

"This looks like a case for you," the magistrate had said to Miss Garrafrey, the probation officer; and he had remanded the prisoner in custody for a week to obtain a medical report on her. Before the probation officer could make any plans to help a defendant in her troubles, it was necessary, especially in cases like this, to know exactly what those troubles were. The prison doctor found that May Small's included syphilis and pregnancy.

Mr. Sutterthwick read the medical officer's report which the clerk handed him, and then said, "Well, Miss Garrafrey, what have you to tell me about this case?"

"I've made inquiries during the past week, sir, and I've seen this woman's husband and her people. They all, unfortunately, refuse to have anything more to do with her. Of course, as May needs hospital treatment to begin with, the problem of finding somewhere for her to live isn't urgent. And it's quite possible they'd want to keep her in hospital until after the birth of the child. After that I think I could arrange for her to stay in a hostel for a time with the child. She could go out to work as soon as she was fit and later on, when she was properly on her feet again, we could make some more permanent arrangements. She's told me she's very sorry for what she's done and wants to try to make amends. The whole trouble has been due to her complete infatuation with this man. But that's finished now. She's always borne a good character in the past and I feel sure she means to lead a decent life again in the future. But in her present position she does need help before she can stand on her own again, and I would suggest a two year order if you are prepared to give her another chance, sir."

Miss Garrafrey sat down and Mr. Sutterthwick addressed the prisoner. " May Small," he said, " You've been making a terrible mess of things just lately and now you've finished up with a week in prison because you allowed this man to make a thief of you. But I believe Miss Garrafrey's right—that you can and will pull yourself together now. It's not too late—although you've got some troubles that you've brought on yourself to get over first. To get you over your bad patch I intend putting you on probation and that means you'll be under Miss Garrafrey's supervision. But Miss Garrafrey is not going to be a kind of sentry over you; she's there to help you in all your troubles. I want you to trust her completely and regard her as a wise friend whom you consult in any difficulty. There is, however, something else in probation besides this chance to make good with the help of the probation officer. If you didn't take the chance and got into trouble again in the next two years you could be brought back here and punished for this offence. And you could get six months' imprisonment for what you've done, don't forget. It's my duty to give you that warning but I don't think you will abuse the leniency that the court is showing you. I'm backing you to become a decent citizen again. Are you willing to accept probation on the terms I've just mentioned ? "

" Yes, sir," said the prisoner in a small voice and looked towards Miss Garrafrey to make sure it was all right. The probation officer smiled and nodded encouragingly to her and May hardly heard Mr. Sutterthwick announcing his adjudication in formal terms.

" Will your worship make an order with regard to the articles recovered from the pawnbrokers ? " asked the detective sergeant.

" Yes," said the magistrate, " they must be handed to the prosecutrix." It was part of the risks of the pawnbrokers' business.

" Your worship," continued the officer, somewhat embarrassed. " There's the question of the frock and coat this woman was wearing when arrested. I understand she has no other outer garments of her own now." He looked at Mr. Sutterthwick as if he half feared the magistrate might order the prisoner to be stripped of them forthwith.

" What does the prosecutrix say about it ? " inquired Mr. Sutterthwick, glancing thoughtfully at the medical report on May Small.

"She's not very keen to wear the things again herself now, sir; but she's not very well off and she can ill afford the loss."

"You hear what he says," said the magistrate to May Small. "It's not right that this woman should suffer for your misdeeds, while you benefit by them, is it? I know it will be some time before you earn any money, but when you are in a job again I think you should make some restitution. I'm going to make an additional order that you pay £2 compensation to the prosecutrix and I'll leave Miss Garrafrey to arrange that you pay it at so much a week when you are able to."

So May Small left the courtroom with something like a hire-purchase arrangement for her stolen clothes. In numb misery she sat in the probation officer's room while Miss Garrafrey waited in the general office for the assistant clerk to draw up the statutory notice setting out the terms of the probation order. There was only this to explain and hand to the probationer and then Miss Garrafrey could start her on her long journey back to self-respect by taking her to that hospital at which so often similar arrangements had had to be made by the probation officer and at which so often she was the patient's only visitor.

Indecent assault

Meanwhile in the courtroom the assistant gaoler had announced "Remand Number Three, Julius Judges, your worship."

The new prisoner was not the kind of man one expected to see in the dock. He was described on the charge sheet as a teacher of music and with his pale, clean-cut features, his hollow temples beneath a back-swept profusion of greying hair, and his thin tight-lipped mouth, he looked very much the aesthete. But was that mouth so tensely drawn merely by firmness of intelligence; or did it betray the strain of keeping close a secret? It was easy enough to imagine the latter when you knew that he had been guilty of an indecent assault on a girl of twelve, one of his pupils.

He had made no attempt to excuse himself in any way when a week ago he had agreed to summary trial and pleaded guilty. The detective in charge of the case had been able to say little about him. The defendant was a married man living apart from his wife; he had no children and no previous convictions; he had been a teacher of music for many years and had never come under the notice of the police before; his rent was 27s. 6d. a week.

"Have you anything to say about this?" the magistrate had asked him and Julius Judges had replied, "There's not much I can say is there, your worship? Except that I'm terribly sorry. I can't understand what made me do such a thing. I must have been mad."

"I'd better remand you for a week to have a medical report on you, then," Mr. Sutterthwick had said, and Caylip, the probation officer in whose area Judges lived, had had a long talk with the prisoner afterwards in his cell.

Once again the clerk handed a prison doctor's report to the magistrate. It read: "This man is in good general health, but he presents certain neurotic symptoms and there are signs of what may be some deep-seated emotional disturbance. He tells me that a few months back his wife went off with another man, and that since then he has had nothing to do with women. Sexual deprivation coupled with bitterness caused by his wife's conduct may have accounted for his present lapse. On the other hand there may be some degree of fixation which at times of stress gets the better of his self-control. It is impossible to be certain on this point without further observation under more normal conditions and it would be well for him to get the advice of a psychiatrist in the difficult period he is passing through. He is not insane or mentally deficient."

"You've seen the doctor's report, I suppose?" said Mr. Sutterthwick to Caylip.

"Yes, sir. The learned clerk showed it to me. In view of its contents I saw the defendant before he came into court and he asks me to tell you that he's quite willing to put himself under the guidance of a psychiatrist and undergo whatever treatment is prescribed. I could get him an appointment with a psychiatrist who is good enough to help us in these cases, if you were disposed to take a certain course, sir. I'm satisfied that the defendant would co-operate with me in the event of his being put on probation."

"Mr. Caylip," said the magistrate, "if he is as anxious as he says he is to be treated by a psychiatrist, is there any reason why he shouldn't ask you to make the appointment and help him in any way you can, after he's been punished for his offence?"

This was not what the probation officer had hoped for; he rather doubted whether Julius Judges would come to him again after a sentence of imprisonment. However, he put the best face on it and said, " No, sir. There's no reason so far as I'm concerned. I shall be willing to help him at any time. But I was hoping that you might feel there were unusual features in this case which would justify you in dealing with it in an exceptional way."

Mr. Sutterthwick smiled kindly at Caylip and shook his head sadly.

" Julius Judges," he said to the prisoner, " You committed a particularly nasty offence against a young girl of twelve who was trusted to your care for the time being. The doctor says you're not insane. I must treat you as a rational being responsible for your actions. I can't accept the fact that a man's wife has left him as any excuse for his debauching a child. I can't conceive any excuse for that, in fact. Unfortunately, I know from my experience sitting in this court that it isn't so uncommon as it should be. I shall do my best to discourage it. Any man who experiences these unnatural desires must control them or suffer the consequences. If he needs the help of a doctor he should go to one straight away and not wait till he's indulged his beastly appetite and then expect to get off scot-free on that plea. On this present charge you are liable to six months' imprisonment. I make due allowance for your previous good character, but I can't pass a sentence of less than three months. You've heard what Mr. Caylip has said about helping you when you come out. It's up to you to take advantage of it if you mean business. But whether you're cured or not of this propensity, you've got to control it."

Julius Judges stepped down from the dock as tight-lipped as ever; the parents of the child left the court looking satisfied with justice; and two friends of the prisoner went out still hardly able to believe what they had heard him admit.

Frell looked at the courtroom clock. The morning's list hadn't gone too badly. That was the last remand; it was a quarter to one and they usually sat till one. But Mure was coming back with yet another prisoner. "That *would* happen," thought the clerk.

Practice and Procedure

Magistrates' Courts

Costs on appeal to quarter sessions

On an appeal from a sentence of imprisonment imposed at a metropolitan magistrates' court, quarter sessions discharged the defendant conditionally and ordered him to pay costs, without using the usual formula " costs of and attending on the hearing of the said appeal " in the memorandum of decision sent to the magistrates' court under section 31 (ix) of the Summary Jurisdiction Act, 1879. As a result doubts arose as to how the costs were to be enforced.

It appeared at first glance that quarter sessions, by virtue of section 31 (vii) of the Summary Jurisdiction Act, 1879, purported by their order to exercise a power which the magistrates' court might have exercised under section 6 of the Costs in Criminal Cases Act, 1952. In that event, it appeared, in view of section 86 of the Magistrates' Courts Act, 1952, that the costs would be enforceable, as a result of section 10 (3) (*a*) of the Costs in Criminal Cases Act, as a sum adjudged to be paid on conviction, *i.e.*, by distress and/or means inquiry, with imprisonment as the ultimate sanction.

Further reference to section 31 (vii) of the 1879 Act showed that it was divided into two parts, the first giving quarter sessions the power on deciding an appeal to do anything that the magistrates' court could have done on the original hearing (in this case, discharge conditionally) and the second, a separate sentence, giving power to award costs. The enforcement of such costs is controlled by section 5 (2) of the Summary Jurisdiction (Appeals) Act, 1933, which provides that " costs ordered to be paid by quarter sessions on any . . . appeal . . . [from a magistrates' court] may be recovered summarily as a civil debt by the party to whom they are ordered to be paid . . . *and shall not be recoverable in any other manner.*" It was therefore clear that the costs were to be enforced by the machinery provided in section 50 of the Magistrates' Courts Act. But if a fine of £10 with £5 5s. costs were altered on appeal to a fine of £20 with £10 10s. costs, the appropriate method of enforcing the additional £5 5s. costs awarded is a matter of some doubt. [J. T. Taylor, Deputy Magistrates' Clerk.]

Coroners' Court

Committal for trial from the court of the coroner

The power of the coroner's jury to return a verdict of murder or manslaughter (or, more recently, of infanticide) dates back to before the inception of committal for trial by examining justices in the form in which it now exists, and it has been suggested that the power should be taken away; indeed, this view was put forward by the Wright Committee (1936) but was not acted upon. In practice, instances occur in which the continuance of such power enables a homicide to be brought to trial at Assizes and convicted upon the coroner's inquisition, which is equivalent to an indictment, for an offence though normal criminal proceedings have not been brought before the examining justices or, if they have been brought, the justices have thrown the case out. Convictions do occur from time to time in such circumstances. In general, the practice is for the coroner to adjourn his inquest until after the conclusion of criminal proceeedings (Coroners (Amendment) Act, 1926, s. 20), such proceedings having been instituted by the Director of Public Prosecutions or by the local police.

In recent articles one Sunday and one daily newspaper seemed to imply that there was something unfair in the power of committal and the writers exhibited a certain lack of knowledge. To some extent one of the inquests to which reference was made was complicated by the refusal of the driver of a motor-car to give evidence in the ordinary way; he took the oath, as indeed he must, but, on the ground that he had been served by the police with a statutory notice of intended prosecution under the Road Traffic Act, he maintained that to answer a question relating to the occurrence that caused the death, would incriminate himself. It is possible that the coroner's jury were influenced by this unusual course and thought that he had something to hide. But it remains the law (and is reinforced in the Coroners Rules, 1953), that no witness need incriminate himself. In the case mentioned, no conviction took place when the inquisition came for trial.

As the result of experience, there seems to be no ground for suggesting that a person whose conduct may be questioned is treated unfairly at an inquest; among the objects of the inquest is the ascertainment of any person who may be criminally responsible for the death; this is kept in focus by the Coroners Rules, 1953. It is essential that the normal limits of evidence be observed in any inquest wherein the possibility of committal for trial exists. It has been suggested by some that the coroner should find the fact of homicide but not name (or commit for trial) the suspected person or that if homicide is suspected he should not pursue it as an issue. It is even sometimes said that all that a coroner need or should do is to find the medical cause of death. In the view of the writer, who thinks that he has general support from those who are properly informed, the resultant inquiry would be of no practical or public value at all. It is sometimes said that the actual wording of the verdict implies the guilt of the person committed for trial since it contains the phrase that A murdered (or unlawfully killed) B and that this is a slur. Surely this is no more than the decision of examining justices who decide before committal that there is a case of murder or manslaughter fit for trial as a prima facie matter?

That coroners perform a necessary duty in public affairs cannot be denied; someone has to deal with the matters that come to them. It seems in consonance with the British idea of justice that it should be done in public if it be a matter of any substance. Coroners no longer have to deal with natural deaths by public inquest, and there is a continuous move towards the merging of districts, thus to employ coroners each with larger experience. But the coroner's jury who are local and who were derived originally from the witnesses, *i.e.*, from those in the locality who had knowledge of the facts, are well fitted to consider the causation of deaths that have occurred in the locality; as long as the proper rules of evidence are observed (as they were in the recent case when the driver refused to answer the question that he thought might incriminate him) and as long as the inquest is open to the public, it is hard to see why the power of the coroner to commit for trial if his jury come to the conclusion that a case of homicide has been shown should be taken away, nor what public advantage would necessarily accrue. In the rare instance in which it occurs, it is unsound to assume or to imagine as likely some injustice as being done. [W. Bentley Purchase, Barrister-at-Law, Coroner for the County of London.]

Case and Comment

[Reports of cases included here are prepared by C. J. Ellis, *Barrister-at-Law*, unless otherwise appears]

Accomplices—*Evidence of.* See R. *v.* Court, p. 622, below.

Habeas Corpus—*Costs—wrongful detention.*

Ex p. Garrett [1] (Q.B., Divisional Court: Hilbery, Cassels and Havers JJ.: June 22, 25) (*The Times*, June 23, 26, 1954).

At the adjourned hearing of an application for leave to issue an order of *habeas corpus* to release G. from a mental colony on the ground that she was wrongfully detained, the applicant's counsel said that as G. had been released the application would be abandoned and he asked for costs against the respondent, the borough medical officer of health. The respondent's counsel submitted that he had nothing to do with the mental colony and never had G. in his care; he had merely taken the view that, as certain technical mistakes had occurred regarding G.'s detention order, the correct procedure was to present a petition on behalf of the local authority to a magistrate and in the interim he thought that G. should stay at the mental colony; in advising her remaining there he thought that he was acting within his powers under the Mental Deficiency Act, 1913.

Held, making an order for costs against the respondent, that the detention order clearly having lapsed by operation of law, G. should have been returned to her parents and although the respondent was acting in perfectly good faith that could not deprive the applicant of his costs.

Homicide—*Self-defence—comparison with provocation.*

H.M. Advocate *v.* Doherty, 1954 S.L.T. 169 (High Court of Justiciary).

D. was charged in the first count of an indictment that while with A, B and C he broke into premises and stole among other things, four hammers. The second count charged D.

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[1] For the applicant: *John Platts-Mills* (instructed by Robert K. George). For the respondent: *John Elton* (instructed by the Town Clerk, Southampton). For the Board of Control: *J. P. Ashworth* (instructed by the Solicitor, Ministry of Health).

with killing C by assaulting him with a bayonet and injuring him so severely that he died. D. pleaded Guilty to the first charge and Not Guilty to the second charge stating the special defence that he had been acting in self-defence. In directing the jury on the defence of self-defence:

LORD KEITH said that if the defence of self-defence was established, D. would not be guilty of culpable homicide. To establish that, there had to be imminent danger to life and limb of the accused and the retaliation used had to be necessary for the safety of the man threatened. If the person assaulted had means of retreat he was bound to use them.

In the present case D. was attacked or threatened by C with a hammer. B handed D. the bayonet and told him to defend himself, which suggested something in the nature of a duel which was not permissible. D. had his friends around him, who might have disarmed C, and there was an open door behind D. which he might have used to escape. The jury had to decide whether D. had no alternative for his own safety but to thrust at C with the bayonet. The jury might think that D. had been provoked, but that was not the defence put forward. "Provocation is a very different matter, and it really is the provocation that has made this a case of culpable homicide and not of murder; the provocation in that sense has been taken into account and, of course, provocation would be taken into account in the matter of sentence if you thought that self-defence did not apply here. . . ."

The jury returned a unanimous verdict of guilty of culpable homicide and D. was sentenced to 12 months' imprisonment in respect of the two charges.

COMMENTARY. As to self-defence, see Archbold, 33rd ed., 934.

Larceny—*Accomplice—person receiving money suspecting it to be proceeds of theft.*

R. *v.* COURT [2] (Court of Criminal Appeal: Hilbery, Cassels and Havers JJ. : June 22, 1954).

A car was stolen in 1951 and taken to T. who sold it and shared the proceeds with the appellant: both of them were living with T.'s mother. T. was convicted of receiving stolen property. The appellant was not arrested until some time later when he was charged with stealing the car. At the appellant's trial, T. gave evidence against the appellant and so did his mother, who said that the appellant and T. had got up very early on the morning that the car was stolen and had returned later very "flush" with money and had given her £50. The recorder said that the fact that T.'s mother was suspicious when they gave her the money did not in his view make her an accomplice, but that he left it to the jury and if they came to the conclusion that she was an accomplice, then they should look with a little care at her evidence. The appellant was convicted and sentenced to fifteen months' imprisonment. He appealed on the ground that Mrs. T. was an accomplice and the recorder had failed to direct the jury on the law relating to accomplices.

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[2] For the appellant: *D. C. Humphreys* (instructed by the Registrar of the Court of Criminal Appeal). For the Crown: *Oliver Martin* (instructed by the Town Clerk, Brighton).

Held, dismissing the appeal, that the recorder's direction was sufficient for the jury to understand the way in which they were to approach the consideration of the case and there was nothing in the point regarding Mrs. T. being an accomplice. There was ample evidence on which the jury could convict.

COMMENTARY. See "Accomplices in Crime" [1954] Crim.L.R. 324.

Magistrates—*Clerk—parties legally represented—clerk's interference.*

HOBBY *v.* HOBBY [3] (Probate, Divorce and Admiralty Division: Lord Merriman P. and Sachs J.: April 28, 1954) ([1954] 1 W.L.R. 1020; [1954] 2 All E.R. 395).

The wife issued a summons before the justices alleging that her husband had deserted her. Both parties were legally represented at the hearing. The justices' clerk had the wife's proof of evidence before him from which he took notes of her evidence. The husband's solicitor, knowing that, raised no objection. After the wife had given her evidence-in-chief, the husband's solicitor started to cross-examine. The clerk intervened so that the husband's solicitor was prevented from putting questions relevant to the issue. When the husband was called, the clerk enumerated five questions which should be put to him. After those questions had been put, the clerk put questions to the husband in the nature of cross-examination and made a note of the answers, but he made no note of the husband's cross-examination by the wife's solicitor. The justices found the husband guilty of desertion and made an order in the wife's favour. On appeal :—

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[3] For the appellant: *R. E. G. Howe* (instructed by Helder, Roberts & Co. for B. Edward Howe, Nicholas & Toms, Port Talbot). For the respondent: *P. L. W. Owen* (instructed by Rutland & Crauford for Walter P. David & Snape, Bridgend). For the justices: *Tasker Watkins* (instructed by Torr & Co. for R. H. C. Rowlands, Cardiff).

Held, allowing the appeal and ordering a retrial, that (1) since both parties were legally represented they did not need the clerk's assistance in putting their respective cases to the court. The clerk had a duty to advise the justices as to what issues were relevant, but in the interests of justice the clerk should not give the appearance of seeking to conduct the case of either party or to limit the way in which that case was conducted. In the present case the clerk had exceeded his duty and put substantial obstruction in the way of the husband's solicitor in the conduct of his client's case and vital points were not put to the husband in his examination-in-chief. Accordingly justice did not appear manifestly to have been done and the decision of the justices could not stand.

(2) The fact that the wife's proof was before the clerk during the hearing was clearly undesirable and in no circumstances should the proof have been used as the basis for the clerk's notes. It was preferable that a bound notebook should be used for his notes.

Murder—*Intent—violence causing death used in order to effect larceny.*

R. *v.* GRANT AND GILBERT[4] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Lynskey JJ.: June 2, 1954) (*The Times*, June 3, 1954).

The two appellants were charged with the murder of a night porter at an hotel. The two men, one of whom had worked at the hotel, determined to enter it and steal what they could find. They started on the enterprise with the preconceived idea of committing the felony of larceny and using as much force as they found necessary to overcome resistance by the night porter. The porter was knocked senseless, gagged and tied up. He must have recovered consciousness and moved, because according to the appellants they left him in a different position from where the body was found. He might have moved and struck his face causing it to bleed so that he was suffocated by the blood and the gag. The judge directed the jury: "If you are satisfied that violence was used from which [the porter] died—upon all of which matters the evidence is only one way—why, then, it is your bounden duty to . . . return a verdict of murder against them." The appellants were found guilty of murder and appealed on the ground that there was no felony involving violence and that the judge ought to have directed the jury that it was open to them to find a verdict of manslaughter.

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[4] For the first appellant: *John Hazan* (instructed by the Registrar, Court of Criminal Appeal). For the second appellant: *Petre Crowder* (instructed by R. W. Platt). For the Crown: *Christmas Humphreys* and *Mervyn Griffith-Jones* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeals, that the judge's direction was correct because, on their own admission, the appellants had the preconceived intention when they started out of offering violence to the porter. The degree of violence did not matter if it was a degree of violence which caused death. If the act of violence was the result of a preconceived intention, that supplied the malice which was necessary in law, and was killing with malice aforethought. The men embarked on the felony of stealing from a dwelling-house knowing that there would be a night porter there, with the intention of using violence towards him if necessary; as that violence resulted in his death the appellants were guilty of murder.

COMMENTARY. See Archbold, 33rd ed., 945 *et seq.*; Russell on *Crime*, 10th ed., 551–63.

Offences Against the Person—*Setting a spring gun—absence of intent to inflict injury.*

R. *v.* BAVASTOCK [5] (East Sussex Quarter Sessions: Mr. Eric Neve, Q.C., Chairman: June 16, 1954).

B. was charged under section 31 of the Offences against the Person Act, 1861, with setting up a spring gun which might inflict grievous bodily harm upon persons and which, in fact, did do so. The evidence was that a party of ramblers were walking along a ride through some woods, when there was an explosion and the leading walkers received gunshot wounds in the face. The shot came from an alarm gun fixed to a stake beside the ride, which was operated by a trip-wire, over which one of the walkers must have stumbled. B., who was a gamekeeper employed by the owner of the woods in question, admitted in evidence that he had set the gun, but said that it was entirely by mistake that he had loaded it with a live cartridge. As he had been having trouble with poachers he had been setting spring guns, and loading them with cartridges from which he had previously extracted the shot. On this occasion, he thought he had loaded the gun with such a cartridge, but must have mixed it with a live one which he had in his pocket, because after the accident he found the prepared cartridge in his pocket. The prosecution contended that section 31 created an absolute liability irrespective of intent or guilty knowledge and that on the admitted facts there must be a conviction. The defence, however, argued that the section only put the burden of proving the absence of guilty knowledge upon the defence, and if they proved that the accident occurred owing to an honest mistake, then there should be an acquittal. The court directed the jury that if they were satisfied that the case was one of pure accident, the defendant was not guilty of any criminal offence. B. was acquitted. [Reported by J. Stuart Daniel, *Barrister-at-Law.*]

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[5] For the prosecution: *Anthony Harmsworth* (instructed by J. E. Dell & Loader, Shoreham). For the defence: *J. Stuart Daniel* (instructed by Patersons, Snow & Co.)

COMMENTARY. The Offences against the Person Act, 1861, s. 31, provides: "Whosoever shall set or place . . . any spring gun, man-trap or other engine calculated to destroy human life or inflict grievous bodily harm, with intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming into contact therewith, shall be guilty of a misdemeanour. . . ."

In *R.* v. *Smith and York* (1902) Northamptonshire Assizes, 37 L.J. Newsp. 89, the accused had set an alarm gun and loaded it with a cartridge containing shot, but there was no evidence to show the prisoners knew the gun contained shot. The defence contended that no offence had been committed under section 31, since the necessary intent to injure was lacking. The intent was merely to give an alarm and was unaffected by the fact that the alarm gun was loaded. This contention was overruled.

See Archbold, 33rd ed., 366, 1014.

Road Traffic—*Construction and use—defective brakes—knowledge of company*

MACDONALD *v.* WILMAE CONCRETE CO., 1954 S.L.T. (Sh.Ct.) 33 (Sheriff Court).

The Wilmae company were charged that they being the owners of a motor-vehicle caused or permitted H. to use the vehicle when the brakes were defective contrary to reg. 75 of the Motor Vehicles (Construction and Use) Regulations, 1951. The defect was due to the pin, on which the brake trigger pivoted, being missing. The company's transport foreman knew that the pin had been replaced by a mechanic a week before, but he did not know that when that was done, instead of the pin being held in position by a split pin it was replaced with lock nuts which must have worked loose and fallen off.

Held, finding the company Not Guilty, that (a) as the offence was one of commission and not omission, it was not enough to show that the company took no action or even that their system of inspection was not perfect; and (b) the offence was an independent one and there was no question of vicarious responsibility.

The defendants being a company, the necessary knowledge had to be brought home to an individual and as no responsible official knew what the mechanic had done, the company were Not Guilty. Had the foreman known of the defect or been put on inquiry that would have been sufficient to bind the company.

COMMENTARY. See Stone, 86th ed., 2758. As to the criminal liability of companies, see Archbold, 33rd ed., 12; Glanville Williams, *Criminal Law*, The General Part, Chap. 22.

Road Traffic—*Drunk in charge of a vehicle—control of the vehicle*

MACDONALD *v.* BAIN, 1954 S.L.T. (Sh.Ct.) 30 (Sheriff Court).

B. was charged with being in charge of a motor-vehicle when under the influence of drink to such an extent as to be incapable of having proper control of it contrary to section 15 of the Road Traffic Act, 1930. B. left his car outside a public-house while he went inside. When he came out he was under the influence of drink to such an extent as to be incapable of having proper control of the car when driving. When seen by the police, B. was standing by the car with T. and another man; the car window was open and the ignition key was in place. When the police approached, T. and the other man walked off in one direction and B. in the other. The police went after B. and questioned him. He said that the car was his and he was looking for someone to drive it home. B. gave evidence that usually when he visited the public-house, anticipating that he would not be fit to drive, he left the car in the car park or arranged for someone to drive it home. On the occasion in question he had not meant to drink anything, but having done so, he asked T. to find someone to drive the car to the car park. T. found a man who said that he would drive the car but would have to see it first, and they were all at the car when the police arrived. B.'s evidence was uncorroborated.

Held, finding the charge Not Proven, that the words " in charge of " had to be read in the light of the following words " incapable of having proper control of the vehicle " and " proper " in that context referred to some specific relationship between the person and the vehicle; looking at the fact that the danger was caused by driving, the relevant relationship was driving and therefore " proper control " meant proper driving control. Accordingly the Crown had to establish that B. was in charge of the car as driver. Although B.'s evidence was uncorroborated it raised a reasonable doubt and therefore it could not be held that B. was in charge as driver at the material time.

COMMENTARY. The Road Traffic Act, 1930, s. 15, provides: " (1) Any person who . . . when in charge of, a motor vehicle on a road . . . is under the influence of drink . . . to such an extent as to be incapable of having proper control of the vehicle, shall be liable . . . [to a fine or imprisonment]."

This case can be compared with the English case of *Haines* v. *Roberts* [1953] 1 W.L.R. 309, where the Divisional Court held that the defendant, not having given his motor-cycle into somebody else's charge, was guilty of the offence.

See also Archbold, 33rd ed., 1019, 1024; Stone, 86th ed., 2046.

Road Traffic—*Public service vehicles—express carriage—special occasion*

M'LENNAN *v.* MACMILLAN, 1954 S.L.T. 109 (High Court of Justiciary).

M. Co. were charged with causing or permitting two motor omnibuses to be used on two occasions as express carriages without a road service licence, contrary to section 72 of the Road Traffic Act, 1930. The sheriff-substitute found that the buses were used to convey members of an ice-hockey supporters' club to cup-tie matches and that all the conditions set out in section 25 (1) of the Road Traffic Act, 1934, had been satisfied, but held that, in view of the decision in *Victoria Motors (Scarborough), Ltd.* v. *Wurzal* ([1951] 2 K.B. 520), the *ratio decidendi* of cases decided before the Act of 1934 had not been superseded by section 25 (1) of the Act of 1934; although the conditions in section 25 (1) had been satisfied, the party was not a private party and the occasions were not special occasions. He accordingly found M. Co. guilty. On appeal:—

Held, allowing the appeal and quashing the conviction, that since 1934 the only relevant inquiry, when considering whether a vehicle was being " used on a special occasion for the conveyance of a private party," was whether the seven conditions in section 25 (1) of the Act of 1934 had been satisfied: *Victoria Motors* (*Scarborough*), *Ltd.* v. *Wurzal* disapproved.

Commentary. The Road Traffic Act, 1934, s. 25 (1), provides: "For the purposes of the proviso to subsection (2) of section 61 of the principal Act, a vehicle shall be deemed to be used on a special occasion for the conveyance of a private party where it is used on a journey in relation to which the following conditions are satisfied. . . ."

The decision in *Wurzal* v. *Dowker* ([1954] 1 Q.B. 52) was apparently not cited to the Scottish court. In that case the Divisional Court reaffirmed the point in the *Victoria Motors* case that the conditions laid down in section 25 (1) are not definitive of what is a special occasion, but merely additional conditions.

See Stone, 86th ed., 2080, 2086.

Road Traffic—*Stage carriage—adults carried in school bus—receipt of tips*

Maclean *v.* Fearn, 1954 S.L.T. (Sh.Ct.) 37 (Sheriff Court).

F. was charged with causing or permitting his servant S. to use a motor omnibus as a stage carriage other than under a road service licence contrary to section 72 of the Road Traffic Act, 1930. At the relevant time the vehicle was on hire as a contract carriage carrying children to and from school. On some occasions adults were allowed to travel in the vehicle at the same time. F. had instructed S. that he must not collect fares. The adult passengers were not asked to pay anything, but at the end of the journey they made small unsolicited payments to the driver who accepted them without comment.

Held, finding F. Not Guilty, that the adult passengers were not carried in the bus " in consideration of separate payments made by them " and therefore the bus was not being used as a stage-carriage.

Commentary. See Stone, 86th ed., 2086.

Sentence — *Corrective training* — *following on sentence of imprisonment*

H.M. Advocate *v.* Miller, 1954 S.L.T. 129 (High Court of Justiciary).

Six men pleaded guilty to prison-breaking at Edinburgh Sheriff Court. As five of the men were serving sentences of corrective training they were remitted to the High Court for sentence. The Lord Justice-General (Lord Cooper) said that the provisions of the recent statute regarding corrective training had given rise, in England as in Scotland, to difficulties. In view of the fact that prison-breaking was an offence of the utmost gravity the court imposed a sentence of one year's imprisonment on the five persons who were serving sentences of corrective training, and on the expiry of that sentence, the unexpired period of corrective training that remained would be revived. The sixth man was sentenced to six months' imprisonment to run consecutively with the sentence of imprisonment that he was serving.

COMMENTARY. As to sentences of corrective training following on a term of imprisonment in England, see *R.* v. *Cannell* [1954] Crim.L.R. 64 and the commentary to that case.

See also Archbold, 33rd ed., 225, 1524.

Sentence—*Corrective training—manslaughter—approval of Prison Commissioners*

R. *v.* SHELDON [6] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Lynskey JJ.: June 2, 1954).

A small child was in S.'s care. It started to cry and after having tried to quieten it without success, S. threw a pillow into the pram. It interfered with the child's breathing and the child died. S., thinking that he had killed the child, went to the police. It appeared from the medical evidence that the child was very ill and would not have lived long, and that although the throwing of the pillow contributed to the child's death, it was not the main cause which was ill-health. S. was convicted of the manslaughter of the child and sentenced to three years' corrective training. The court, dismissing S.'s appeal against sentence, said that it was very unusual to give such a sentence for manslaughter, but as the Prison Commissioners thought that S. was suitable for corrective training the court would not interfere.

COMMENTARY. See Archbold, 33rd ed., 1523–5.

Sentence—*Corrective training—previous convictions not put to accused*

R. *v.* SMITH [7] (Court of Criminal Appeal: Hilbery, Cassels and Havers JJ.: June 22, 1954).

S. pleaded guilty to a charge of office-breaking and larceny and was sentenced to three years' corrective training. At the trial the police officer had proved the service of the notice on S. under section 23 of the Criminal Justice Act, 1948, but although the two previous qualifying convictions were before the court they were not put to S. for his admission or denial. He appealed against sentence.

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[6] The appellant appeared in person.

[7] The appellant appeared in person.

Held, allowing the appeal by reducing the sentence to two years' imprisonment, that it had been laid down in *R.* v. *Browes* ((1949) 33 Cr.App.R. 164) that the Act of 1948 made it a prerequisite to the passing of a sentence of corrective training that the previous convictions qualifying an offender for such a sentence should be put to him in court and the fact that that had not been done was sufficient for the court to allow the appeal. In the present case also there was no report before the judge that S. was suitable for corrective training.

COMMENTARY. The Criminal Justice Act, 1948, s. 23 (1) provides: "Unless any . . . previous conviction or sentence is admitted by the offender the question shall be determined by the verdict of a jury."

In *R.* v. *Browes*, *supra*, Lord Goddard C.J. said: "It is desirable that it should be remembered by all courts, both of assizes and quarter sessions, that before a sentence of corrective training or of preventive detention is passed, the convicted person is to be asked whether he admits the convictions of which notice has been given."

See Archbold, 33rd ed., 1523, 1531.

Trial—*Plea—withdrawal of plea of guilty*

R. *v.* McNally [8] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Havers JJ.: May 24, 1954) ([1954] 1 W.L.R. 933; [1954] 2 All E.R. 372).

M. and a number of other men, including S., were charged with warehousebreaking and housebreaking. They all pleaded guilty except S., but were not sentenced until after his trial, when the other men, including M., were brought up one by one to be sentenced. Before sentence was passed M. told the judge that he wished to change his plea to one of "Not Guilty." M. had several previous convictions, had been caught red-handed and had pleaded guilty without qualification. The judge did not ask M. why he wished to change his plea but refused to allow him to do so, telling him that he only wanted to give trouble, and he sentenced M. to seven years' imprisonment. M. appealed against conviction on the ground that the judge, by not asking him why he wished to change his plea, had not properly exercised his discretion to allow the alteration of the plea.

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[8] For the appellant: *T. R. Fitzwalter Butler* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Sir Noel Goldie*, Q.C. and *Sidney Smith* (instructed by P. B. Dingle, Town Clerk, Manchester).

Held, dismissing the appeal, that the question whether a plea might be withdrawn after arraignment was entirely a matter for the trial judge. If the court came to the conclusion that there was a question of mistake or misunderstanding, or that it would be desirable on any ground that the prisoner should be allowed to join issue, then no doubt the court would allow him to do so. In the present case the judge had all the relevant facts before him and could see that there was no ground for allowing M. to withdraw his plea.

R. v. *Blakemore* ((1948) 33 Cr.App.R. 49), in which in exceptional circumstances a person was allowed to withdraw a plea of guilty after judgment, ought not to be followed; "once sentence has been pronounced there is no power in the court to allow the plea to be withdrawn": *R.* v. *Sell* (1840) 9 C. & P. 346.

COMMENTARY. See Archbold, 33rd ed., 135.

Acts and Orders

Agriculture

AGRICULTURE (MISCELLANEOUS PROVISIONS) ACT, 1954 (2 & 3 Eliz. 2, c. 39): operative June 4, 1954.

Local authorities are given power to collect suitable kitchen or other waste for use as animal feeding stuffs (section 9 (1)). Previously this power was only exercisable under the Defence (General) Regulations, 1939.

Anyone who wilfully deposits in a receptacle provided for the collection of such waste anything which he knows, or has reasonable cause to believe is unsuitable for use as an animal feeding stuff is liable to a fine not exceeding £5. Any unauthorised person who removes any of the contents of such a receptacle placed in a street or public place is liable to a fine not exceeding £10 for a first offence or £20 for a subsequent offence (section 9 (5)).

A local authority may make by-laws regulating the collection of such waste and may provide fines for their infringement (section 9 (6)).

Unless taken by or with the consent of the Director of Public Prosecutions, only the local authority in whose area one of the above offences is alleged to have been committed may take proceedings (section 9 (7)).

See also pp. 634, 646.

AGRICULTURE (POISONOUS SUBSTANCES) REGULATIONS, 1954 (S.I. No. 828): operative July 1, 1954.

The Regulations of 1953, as amended, are revoked and replaced. The principal changes are (1) a new organophosphorus compound is added to the list of poisonous substances to which the Regulations apply; (2) modifications are made in the protective clothing which workers are required to wear; (3) certificates of exemption may be granted in respect of all the Regulations; (4) such a certificate may be granted if the employer satisfies the inspector that, because of exceptional circumstances or the small extent of the work to be done, the protection provided by the Regulations is unnecessary.

For penalties, see section 4 of the Agriculture (Poisonous Substances) Act, 1952.

Animals

PROTECTION OF ANIMALS (AMENDMENT) ACT, 1954 (2 & 3 Eliz. 2, c. 40): operative January 1, 1955.

A person who has been convicted of cruelty to an animal under the Protection of Animals Act, 1911, or the Protection of Animals (Scotland) Act, 1912, may, on conviction on a subsequent occasion, be disqualified, for such period as the court thinks fit for having custody of any animal or any specified kind of animal (section 1 (1)). The disqualification order may be suspended (section 1 (2)) and provision is made for the making of an application for the removal or varying of the order and for the methods of dealing with such an application (section 1 (3)). The penalties for breach of a disqualification order are, on summary conviction, a fine not exceeding £50 or imprisonment not exceeding three months or both (section 2).

The maximum fines which may be imposed on persons convicted under certain provisions of the Protection of Animals Acts are increased from £25 to £50 (section 3); the provisions are section 1 (1) of the 1911 Act, section 1 (1) of the 1912 (Scotland) Act, section 1 (4) of the 1933 (Cruelty to Dogs) Act, and section 1 (4) of the 1934 (Cruelty to Dogs, Scotland) Act.

AGRICULTURE (MISCELLANEOUS PROVISIONS) ACT, 1954 (2 & 3 Eliz. 2, c. 39): operative June 4, 1954.

Orders may be made by the Minister of Agriculture and the Secretary of State jointly restricting the importation of honey bees into Great Britain (section 10 (1)). The Minister or any authorised person may license particular importations which would otherwise be prohibited by such an order (section 10 (2)).

Any person who imports bees in contravention of an order or who fails to observe the conditions of a licence granted to him is liable on summary conviction to a fine not exceeding £20 (section 10 (7)).

Subject to the adaptations contained in Schedule II, the Diseases of Animals Act, 1950, is made to apply in relation to aircraft and aerodromes as it applies to vessels and ports (section 11 (1)).

PROHIBITION OF LANDING OF SWINE FROM THE CHANNEL ISLANDS ORDER, 1954 (S.I. No. 721); PROHIBITION OF LANDING OF SWINE FROM NORTHERN IRELAND ORDER, 1954 (S.I. No. 722): both operative June 2, 1954.

No pigs except those intended for immediate slaughter may be landed in Great Britain from the Channel Islands or from Northern Ireland. Pigs intended for slaughter may only be moved from a landing place if a licence is obtained and must then be moved direct to the bacon factory or slaughterhouse specified in that licence.

For penalties for infringement, see Diseases of Animals Act, 1950, ss. 78–82.

IMPORTATION OF CARCASES AND ANIMAL PRODUCTS ORDER, 1954 (S.I. No. 853): operative July 3, 1954.

Subject to certain exceptions neither the carcases of swine, bovine animals, sheep, goats and other ruminating animals nor any products of such animals may be landed in Great Britain except in accordance with a licence granted by the Minister of Agriculture and Fisheries. Some animal products are exempted from the Order; carcases and animal products imported from some Commonwealth countries and from Finland, Iceland and Norway are unaffected and carcases and animal products from other countries may be imported if they satisfy specified conditions.

The Importation (Raw Tongues) Order, 1913 (S.R. & O. No. 449), as amended, and the Importation of Carcases (Prohibition) Order, 1926 (S.R. & O. No. 574), as amended, are revoked. Licences granted under these orders and in force immediately before July 3, 1954, have effect as if granted under this Order until September 15, 1954.

For penalties for infringement, see the Diseases of Animals Act, 1950, ss. 78–82.

TUBERCULOSIS (AREA ERADICATION) AMENDMENT ORDER, 1954 (S.I. No. 762): operative July 1, 1954.

The Order of 1950 (S.I. No. 2006) is amended. A licence authorising the movement of bovine animals to a fat stock market in either an eradication or attested area, must contain certain specified conditions about the marking and segregation of the animals, and the movement of such animals is restricted. The Amendment Order of 1952 (S.I. No. 1473), which relates to cattle moved under the authority of a licence granted under the Animals (Landing from Ireland, Channel Islands and Isle of Man) Order, 1933, or the Importation of Canadian Cattle Order, 1933, is revoked and replaced; certain additional requirements as to the marking and movement of such animals are made.

As to penalties for infringement, see art. 15 of the Order of 1950.

FOOT-AND-MOUTH DISEASE (CONTROLLED AND INFECTED AREAS) (MODIFICATION OF RESTRICTIONS) (REVOCATION) ORDER, 1954 (S.I. No. 875): operative July 1, 1954.

The Foot-and-Mouth Disease (Controlled and Infected Areas) (Modification of Restrictions) Order, 1941 (S.R. & O. No. 445) and the Foot-and-Mouth Disease (Infected Areas) (Modification of Restrictions) Order, 1943 (S.R. & O. No. 66), which authorised the movement under licence of animals to and from collecting centres in controlled and infected areas, are revoked. The matter is regulated by Orders of 1938 (S.R. & O. Nos. 1434, 1435).

Armed Forces

ARMY AND AIR FORCE (ANNUAL) ACT, 1954 (2 & 3 Eliz. 2, c. 35) : operative June 4, 1954.

The Army Act and the Air Force Act are continued in force until July 1, 1955.

The limitation period within which prosecutions must be commenced under section 170 (1) of either Act is abolished, see below, p. 644.

NATIONAL SERVICE (AMENDMENT) REGULATIONS, 1954, AIR FORCE (S.I. No. 805); MILITARY FORCES (S.I. No. 821); NAVAL AND MARINE FORCES (S.I. No. 859) : all operative June 30, 1954; NATIONAL SERVICE (ADAPTATION OF ENACTMENTS) (NAVY, ARMY AND AIR FORCE RESERVES) ORDER, 1954 (S.I. No. 837): operative June 24, 1954.

Amendments are made to the National Service Regulations of 1949 concerning voluntary service which may be treated as equivalent to a term of part-time service.

The Acts relating to the Reserves of the Army, Navy and Air Force are adapted in their application to service in the appropriate reserve under the Navy, Army and Air Force Reserves Act, 1954.

See Public Health (Scotland) Amendment Regulations, 1954, p. 647, below.

Betting

Pool Betting Act, 1954 (2 & 3 Eliz. 2, c. 33): operative June 4, 1954 (but see section 11).

Pool betting is regulated. Promoters of pool betting must be registered with the local authority in the place where they carry on their principal business (section 1). The local authorities must appoint an accountant (section 2) who exercises a certain supervision over the promoters' actions.

A pool betting business carried on by a registered promoter must comply with certain requirements, the most important being that it must take the form of the promotion of competitions for prizes for making forecasts as to sporting or other events; each bet must be an entry in a particular competition and the stakes and winnings must be wholly in money. A promoter may retain a certain percentage of the stakes, but this percentage must be the same in all competitions depending on events taking place on the same day (section 3 (1)).

After each competition promoters are under a duty to supply to the accountant, and in some cases the local authority, certain information, reports, etc. (section 4 (1), (5), (6), (7)). They must also send to every competitor a statement of the percentage retained by them for commission and expenses or publicise it by means of a newspaper advertisement (section 4 (2)).

The accountant and any servant authorised by him may enter the premises on which a registered pool promoter carries on his business, and may require the pool promoter or his servant to give information concerning the business or to produce accounts, books or other documents (section 5 (2)). It is an offence to obstruct an accountant or his servant, or not to comply with any requirement duly made by him or to supply him with false or misleading information (section 8 (1) (*b*), (*c*)).

If the provisions of the Act are contravened or not complied with in the case of the business of any registered pool promoter, except so far as they concern the duties of a local authority or accountant, the promoter is guilty of an offence under the Act (section 8 (2)).

For contraventions of the Act the penalty on summary conviction is a fine not exceeding £100 for a first offence, or

£200 or imprisonment for not more than three months or both, for a subsequent offence; on conviction on indictment the penalty is a fine not exceeding £500 for a first offence, or £750 or imprisonment for not more than one year or both, for a subsequent offence (section 8 (3)). Section 29 of the Betting and Lotteries Act, 1934, which relates to offences by bodies corporate, applies to offences under this Act (*ibid.*). A local authority may take proceedings for offences (section 8 (4)).

The Ready Money Football Betting Act, 1920, and section 1 of the Betting Act, 1853, do not apply to a business carried on by post by a registered pool promoter (section 10).

The Act does not apply to any bets depending wholly on events taking place before the end of 1954, or to totalisator betting on approved racecourses and licensed dog tracks (section 11). It applies to Scotland, subject to certain adaptations (section 12).

Birds

PROTECTION OF BIRDS ACT, 1954 (2 & 3 Eliz. 2, c. 30): operative December 1, 1954.

Save for the exceptions set out in the Act, wilfully to kill, injure or take any wild bird or to attempt to do so, or to take, damage or destroy the nest of any wild bird while it is in use or to take or destroy an egg of such bird is an offence. There is a special penalty if the offence is committed in respect of a bird named in Schedule I (section 1). The exceptions concern birds listed in Schedule II which may be killed or taken by any authorised person and whose nests may be taken or destroyed by such persons (section 2 (1), (3)); birds listed in Schedule III, which may be killed or taken by anyone outside the birds' close season (section 2 (2), (6)); the taking of the eggs of wild duck, geese or swans for the purpose of hatching by authorised persons (section 2 (3)); the taking of certain eggs by anyone (section 2 (4)).

Subject to the consent of the owners and occupiers of the land affected, the Secretary of State may by order create new bird sanctuaries by making interference with the birds, their nests or eggs an offence under the Act (section 3). Any person contravening the provisions of a similar order made under an Act repealed by this Act is made guilty of an offence under this Act (section 3 (3)).

Various acts done under statutory authority, for agricultural purposes or in regard to disabled birds are exempted from the provisions of the Act and of any order made under section 3 (section 4).

Certain methods of killing or taking wild birds are prohibited and a person using such methods is liable to a special penalty (section 5). The sale of live and dead wild birds, their eggs, skin or plumage is restricted (section 6). The importation of quail and dead lapwings is prohibited at all times and of dead wild duck, wild geese and of the birds included in Schedule III from February 1 to August 31. The importation of lapwings' eggs is prohibited on or after April 15 in any year (section 7).

It is an offence to keep a captive bird in a cage in which it cannot freely stretch its wings. Exceptions to this provision are made as regards poultry, birds being taken from place to place, public exhibitions or competitions and birds being treated by veterinary surgeons (section 8).

The Secretary of State may vary the Schedules of the Act (section 9), and he, the Nature Conservancy and the Minister of Agriculture and Fisheries are given power to grant licences in certain circumstances exempting persons from the provisions of the Act (section 10).

If an offence under the Act carries a special penalty, the penalty for infringement is a fine not exceeding £25 or imprisonment for a term not exceeding one month, if it is a first offence, or three months, if it is a second or subsequent offence; or both a fine and imprisonment. Otherwise the penalty for infringement is a fine not exceeding £5 (section 12 (2)). For the purposes of calculating the maximum fine which may be imposed each separate offence under the Act is to be considered separately.

Constables are given power to stop and search persons without a warrant if they are found committing an offence against this Act, and to arrest them if they do not satisfy the constables as to their name and address. They may also seize any wild bird, nest or egg or any weapon capable of killing or taking wild birds in such a person's possession (section 12 (1)).

If a person is convicted of an offence against this Act, the court may order the forfeiture of the bird, nest, egg or skin which is the subject of the offence and of any weapon or article used to commit the offence (section 12 (3)).

Local authorities are given power to institute proceedings (section 12 (4)). If an offence is committed on the water or in the air outside the jurisdiction of any court, it shall be deemed to have been committed where the offender is found or where he is first brought after the offence (section 12 (5)).

Section 13 relates to the making of orders under the Act; section 14 is the interpretation section; section 15, Schedules V, VI, amend and repeal a number of previous enactments. The Wild Birds Protection Acts, 1880–1908 are repealed.

Civil Aviation

AIR NAVIGATION ORDER, 1954 (S.I. No. 829): fully operative August 1, 1954.

The Order of 1949 (S.I. No. 349), as amended, which created a number of offences, is revoked and replaced with certain further amendments. The principal changes are: (1) there are new requirements concerning certificates of maintenance of aircraft intended to carry passengers or goods for hire or reward and records of the flying hours and defects of such aircraft (articles 16, 17); (2) the personnel of public transport aircraft must have certain prescribed training and practice and undergo periodical tests; records of such training and tests must be kept (article 18 (4)); (3) holders of licences issued by Contracting States may, subject to limitations, form part of the operational crews of certain aircraft flown in the United Kingdom (article 21 (4) (*b*)); (4) flight engineers' and flight navigators' licences (cadet class) are abolished; (5) the Minister of Transport and Civil Aviation may require instruments and equipment, and the manner in which they are stowed to be approved in writing and may require passengers to be instructed in the use of equipment (article 33); (6) no person under sixteen years may have sole control of a glider in motion (article 46); (7) the Order applies to persons in and the personnel of any aircraft registered in the United Kingdom wherever they may be, and to other persons, if they are British subjects or citizens of the Republic of Ireland, wherever they may be. This does not affect the protection afforded to persons under section 3 (1) of the British Nationality Act, 1948 (article 68); (8) amendments are made to the rules in Schedule II.

As to penalties for infringement, see articles 67, 73.

COLONIAL CIVIL AVIATION (APPLICATION OF ACT) (AMENDMENT) ORDER, 1954 (S.I. No. 830); COLONIAL AIR NAVIGATION (AMENDMENT) ORDER, 1954 (S.I. No. 831): both operative July 1, 1954.

The Colonial Civil Aviation (Application of Act) Order, 1952 (S.I. No. 868), as amended, and Colonial Air Navigation Order, 1949 (S.I. No. 2000) no longer apply to Northern Rhodesia and Nyasaland.

Coroners

CORONERS ACT, 1954 (2 & 3 Eliz. 2, c. 31) : operative on a day to be appointed.

The Secretary of State is given power to prescribe by rules the fees and allowances to be paid by coroners to witnesses at coroners' inquests and to medical practitioners making post-mortem examinations for coroners.

Defence Regulations

DEFENCE REGULATIONS ORDERS, 1954, No. 2 (S.I. No. 750); No. 3 (S.I. No. 840) : both operative June 30, 1954; No. 4 (S.I. No. 841) : operative July 1, 1954.

Regulation 59 (1) of the Defence (General) Regulations, 1939, is modified and the power of the Minister of Labour and National Service and of the Minister of Labour for Northern Ireland to grant exemptions from the Factories Act, 1937, and Factories Act (Northern Ireland), 1938, is curtailed.

Regulation 72 is revoked and the Minister of Transport and Civil Aviation may no longer provide that it shall be a defence to proceedings under the Road and Rail Traffic Act, 1933, to prove that the vehicle was being used under an authority granted by him or on his behalf.

The Defence (Agriculture and Fisheries) (Northern Ireland) Regulations, 1940, are revoked.

Emergency Laws

UNMANUFACTURED TOBACCO (MISCELLANEOUS CONTROLS) (REVOCATION) ORDER, 1954 (S.I. No. 737) : operative June 10, 1954.

The Unmanufactured Tobacco (Returns) Order, 1940 (S.R. & O. No. 861) and the Unmanufactured Tobacco (Supply) Order, 1942 (S.R. & O. No. 710), as amended, which imposed certain controls on dealings with leaf and unmanufactured tobacco, are revoked.

Explosives

CONTROL OF EXPLOSIVES ORDER, 1954 (S.I. No. 757): operative June 12, 1954.

The Order of 1953 (see [1954] Crim.L.R. 71) does not apply to the acquisition or transfer of any explosive by or on behalf of the service authorities of any country to which Part I of the Visiting Forces Act, 1952, applies (see [1954] Crim.L.R. 558).

Factories

See DEFENCE REGULATIONS (NO. 2) ORDER, p. 641, above.

Food and Drugs

SLAUGHTERHOUSES ACT, 1954 (2 & 3 Eliz. 2, c. 42): operative July 5, 1954.

Local authorities are to be responsible, for the time being, for securing that adequate slaughterhouse facilities are available locally (section 1). Charges may be made in respect of the use of public slaughterhouses (section 2). Provision is made for the grant and renewal of licences (section 3); the restriction of private slaughterhouses (section 4); compensation for closure or refusal of licence (section 5). As this part of the Act is to be read as if contained in Part V of the Food and Drugs Act, 1938, the provisions of the 1938 Act relating to powers of entry, offences, etc., will apply to this new Act.

Part II, sections 7 to 13 contain similar provisions regarding the responsibility for slaughterhouses, their use, etc., in Scotland. In addition, power is given to make by-laws and enter premises (sections 12, 13).

FOOD CONTROL COMMITTEES (REVOCATION) ORDER, 1954 (S.I. No. 817): operative July 4, 1954.

The Food Control Committees (Constitution) Order, 1943, (S.R. & O. No. 1304), which provided for the setting up and functioning of local Food Control Committees and the Food Control Committees (England and Wales and Northern Ireland) Enforcement Order, 1941 (S.R. & O. No. 133), under which such committees had powers of enforcement and prosecution, are revoked.

Food Rationing (Amendment and Revocation) Order, 1954 (S.I. No. 797): operative June 21, 1954; Food (Revocation) Orders, 1954; Licensing of Establishments (S.I. No. 818); Seasonal Allowances (S.I. No. 819): both operative July 4, 1954; Knacker's Yard (Revocation) Order, 1954 (S.I. No. 856) : operative July 1, 1954.

The remaining Food Rationing Orders are revoked, bringing to an end the food rationing scheme, but without prejudice to any proceedings in respect of contraventions. Other provisions under the rationing scheme concerning the licensing of certain catering establishments, the purchase of rationed food by farmers for their seasonal workers, and knackers' yards are revoked.

Meat (Prices) (Amendment and Revocation) Order, 1954 (S.I. No. 823) : fully operative July 4, 1954; Livestock (Restriction on Slaughtering) (Amendment and Revocation) Order, 1954 (S.I. No. 825) : fully operative July 2, 1954; Pigs (Sales) (Amendment and Revocation) Order, 1954 (S.I. No. 826); Pigs (Sales) (Northern Ireland) (Amendment and Revocation) Order, 1954 (S.I. No. 827); Livestock (Sales) (Amendment and Revocation) Order, 1954 (S.I. No. 857) : all fully operative July 1, 1954; Bacon (Revocation) Order, 1954 (S.I. No. 873) : operative July 4, 1954.

Controls on the sale of meat and bacon, the processing and distribution of bacon, the slaughtering of livestock, and the sale and purchase of pigs or livestock for slaughter for human consumption are removed, but without prejudice to proceedings for the contravention of the Orders thereby revoked.

Fatstock (Guaranteed Prices) (Marking) Order, 1954 (S.I. No. 872) : operative July 1, 1954.

Fat cattle, sheep and pigs which are approved at livestock markets as eligible for guaranteed prices, must be marked in a prescribed manner. Animals so marked may not be used for breeding purposes.

For penalties for infringement, see Defence (General) Regulations, 1939, reg. 92.

Ships' Stores (Revocation) Order, 1954 (S.I. No. 858): operative July 4, 1954.

The Ships' Stores Order, 1953 (S.I. No. 1897; see [1954] Crim.L.R. 224), as amended, is revoked.

Friendly Societies

INDUSTRIAL AND PROVIDENT SOCIETIES (AMENDMENT) ACT, 1954 (2 & 3 Eliz. 2, c. 43): operative August 5, 1954.

Certain amendments are made to the Act of 1893, among them being the following: the provisions as to the names of industrial and provident societies are altered (sections 2, 3); the registrar may allow annual returns to be made at a date later than that contained in the Act of 1893 (section 4 (1)); registered societies may not publish any balance sheet which has not been audited by at least one approved auditor (section 4 (3)); an auditor is not an officer of a society (section 4 (5)); every such society must keep at its registered office a register of its members and officers (section 5).

As to offences see sections 62, 63 and 69 of the Act of 1893.

If on proceedings under section 64 of the Act of 1893 it is not proved that the defendant acted with fraudulent intent, while he may be ordered to deliver up property belonging to the society concerned or to repay money he has misapplied, he may not be convicted under that section (section 9 (1)). Summary proceedings for any fine under the Act of 1893 may be brought by the Registrar at any time within one year of his discovery of the liability to pay them, but not more than three years after the commission of the offence (section 9 (2)).

Juries

JURIES ACT, 1954 (2 & 3 Eliz. 2, c. 41): operative July 5, 1954.

The limits on the payments to be made to jurors in respect of service for any one day, as compensation for loss of earnings and certain expenses contained in the provisos to sections 1 (1) (England and Wales) and 24 (1) (Scotland) of the Juries Act, 1949, are abolished. (See also Home Office Circular No. 143/1954 dated July 19, 1954.)

Limitation of Actions

LAW REFORM (LIMITATION OF ACTIONS, ETC.) ACT, 1954 (2 & 3 Eliz. 2, c. 36): operative June 4, 1954.

The periods of limitation for the commencement of prosecutions contained in the Army Act, s. 170 (1) (2), the Air Force Act, s. 170 (1) (2), the Public Authorities Protection Act, 1893, the Public Health (Scotland) Act, 1897, s. 166, and the National Health Service (Scotland) Act, 1947, s. 70 (*b*) are abolished.

London

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 10 (S.I. No. 723): operative June 16, 1954; No. 12 (S.I. No. 745): operative June 22, 1954.

Prescribed routes are detailed for Maple Mead Road in Billericay between its junctions with Southend Road, and for Pelton Road in Greenwich, between its junctions with Blackwall Lane and Conley Street. Fines not exceeding £5 for a first offence and £10 for a second offence may be imposed for contraventions.

Merchant Shipping

MERCHANT SHIPPING (PASSENGER RETURNS) REGULATIONS, 1954 (S.I. No. 849): operative January 1, 1955.

The Regulations of 1933 (S.R. & O. No. 331) are revoked and replaced, and provision is made in greater detail for the returns which Masters of ships are required to make concerning passengers carried to or from the United Kingdom.

It is an offence for a Master to fail to make the prescribed returns. For penalties see sections 311, 312 of the Merchant Shipping Act, 1894 and section 76 of the Act of 1906.

Official Secrets

ATOMIC ENERGY AUTHORITY ACT, 1954 (2 & 3 Eliz. 2, c. 32); APPOINTED DAY ORDER, 1954 (S.I. No. 832): operative August 1, 1954.

Places belonging to or used by the Atomic Energy Authority set up under this Act may be declared prohibited places under the Official Secrets Act, 1911, by the Secretary of State. Nobody other than a constable, an officer of the Customs and Excise or an officer of the Inland Revenue acting in the execution of his duty or an authorised officer of a Government Department may enter such a place without the consent of the Authority or, if such consent is refused, of the Lord President of the Council (section 6 (3)).

Some provisions of certain Acts, including the Atomic Energy Act, 1946, the Official Secrets Act, 1911, and the Special Constables Act, 1923 are modified by Schedule III.

Police

Royal Irish Constabulary (Widows' Pension) Regulations, 1954 (S.I. No. 703): operative June 1, 1954.

The Secretary of State has exercised the power given to him by the Royal Irish Constabulary (Widows' Pensions) Act, 1954 ([1954] Crim.L.R. 394), as to the pensions of widows of former members of the Royal Irish Constabulary.

Road Traffic

See Defence Regulations (No. 3) Order, p. 641, above.

Seeds

Agriculture (Miscellaneous Provisions) Act, 1954 (2 & 3 Eliz. 2, c. 39) : operative June 4, 1954.

The Seeds Act, 1920, is amended (section 12). The statement of particulars required by section 1 of the Act of 1920 must now be delivered not later than seven days after the sale, or if the goods are not delivered at the time of sale, not later than seven days after their delivery (section 12 (2)). Such statement need no longer be contained in a sale note or invoice (section 12 (3)). The validity of a contract is not affected by any contravention of section 1 or by any other illegality under the Act of 1920 in the performance of the contract (section 12 (1)).

Scotland

Animals

As to cruelty to animals, see p. 634, above; the protection of wild birds, p. 638; the importation of bees, p. 634; the importation of pigs, p. 635; the movement of animals in tuberculosis eradication or attested areas, p. 635; the importation of carcases and animal products, p. 635.

Betting

See p. 637, above.

Corn Returns

Agriculture (Miscellaneous Provisions) Act, 1954 (2 & 3 Eliz. 2, c. 39) : operative June 4, 1954.

The Corn Returns Act, 1882, is extended to Scotland, subject to certain modifications. In Scotland a person making a fraudulent return is liable to a fine not exceeding £20 (section 14).

Defence Regulations

See p. 641, above.

Food and Drugs

As to slaughterhouses, see p. 642, above.

Friendly Societies

See p. 644, above.

Juries

See p. 644, above.

Limitation of Actions

See p. 644, above.

Public Health

PUBLIC HEALTH (SCOTLAND) AMENDMENT REGULATIONS, 1954, SHIPS (S.I. No. 754); AIRCRAFT (S.I. No. 755): both operative June 12, 1954.

Aircraft and ships belonging to forces to whom the Visiting Forces Act, 1952, applies (see [1954] Crim.L.R. 558) are exempted from the Public Health (Scotland) Regulations, 1952.

Letters to the Editor

Dangerous and Careless Driving

Sir,

On page 537, *ante,* you refer to the case where a person charged with dangerous driving elected to go for trial and the police then issued a further summons against her for careless driving, which summons was heard after she had been acquitted of dangerous driving. You also refer to the criticism by the Recorder of Guildford of the action of the police in this case. There are various ways in which such undesirable results can be avoided by procedural changes, all of which would require statutory sanction. But I suggest that these would all be merely tinkering with the problem. What is wanted, in my view, is a new approach to the problem of dangerous and careless driving altogether. The Motor Car Act, 1903, s. 1, created in one subsection the offence of reckless or negligent driving or driving at a dangerous speed or in a dangerous manner, but the Road Traffic Act, 1930, under ss. 11 and 12, created the two separate offences of dangerous etc. driving and careless etc. driving. This can result in confusion and sometimes injustice. Firstly, it is up to the prosecutor to decide which charge to select. Sometimes the police charge careless driving only and are criticised for not bringing a charge of dangerous driving. More often, they charge dangerous driving and the magistrates find careless driving only proved. The latter procedure can be quite a hardship and worry to a defendant and one can visualise cases which are sent for trial against his will, thereby involving him in considerable expense. Also, of course, the fact that the defendant elects to go for trial, as he can, will mean that extra expense will fall on the prosecution. Another difficulty, as you point out, can arise where both dangerous and careless driving are charged and the defendant pleads not guilty to dangerous driving and guilty to the careless driving, so that he may thereby be able to set up a plea of *autrefois convict* to the charge of dangerous driving. Again, where both have been charged and there has been a conviction for both with no or only a small penalty on the careless driving charge, and there is an appeal against the conviction for dangerous driving, the Appeals Committee, if allowing the appeal, may feel that the penalty imposed for careless driving is quite inadequate, and yet be powerless to increase it. Again, if a case goes for trial, there is no right for the jury to find careless driving only proved and proceedings for the latter offence must be dealt with by the magistrates' court, which again causes expense to both sides and may cause hardship to the defendant. Lastly, it is not clear what is the correct procedure under section 35 of the Road Traffic Act, 1934, and there may be legal pitfalls when this is adopted.

I do not say that any of these are very grave matters but they do show that there are technical and legal difficulties still unresolved and which can lead to expense and difficulty. I would also question whether it is right that a defendant should have the choice of being tried by a jury for dangerous driving at all. Lord Goddard C.J. recently said in *R.* v. *Salisbury and Amesbury JJ.* ([1954] 3 W.L.R. 29) that juries tend to acquit on charges of driving under the influence of drink and Mr. Walter Rayburn, Q.C., at a conference of the Pedestrians' Association, questioned the value of the jury at all in road traffic cases. The jury may be a very fine thing in preventing constitutional oppression but it is, it is submitted, not right that persons who can afford to go for trial should have a greater chance of acquittal by so electing. The jury is not really needed for road traffic cases, as these can hardly be made into engines of oppression, for a dictator, should we ever have one in this country, is not likely to seek to get rid of his political enemies by charging them with reckless driving.

The radical change which I suggest is that sections 11 and 12 and the provisions consequent thereon should be repealed and that one offence should replace them, *viz.* negligent driving, to cover any form of driving made an offence by section 11 or section 12. This offence should be triable either summarily or on indictment but the defendant should have no right to insist on trial by jury. There would, of course, be nothing to stop him asking for it, but this time he would have to give a good reason for not wishing to be tried before the justices. Likewise, the prosecution could also ask for a charge of negligent driving to be tried at Quarter Sessions or Assizes on the ground of the grave circumstances of the case. Perhaps I can make my point clear if I set out the proposed new section:

> "Any person who drives a motor-vehicle on a road negligently shall be guilty of an offence and shall be liable:
>
> (a) on summary conviction to a fine of £50 or three months imprisonment; and
>
> (b) on conviction on indictment to a fine or imprisonment for two years or both.
>
> In this section driving negligently shall include driving dangerously, driving recklessly or driving at a dangerous speed, having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic which is actually at the time, or might reasonably be expected to be on the road, or driving without due care and attention or driving without reasonable consideration for other users of the road."

The defendant's right to insist on trial by a jury is taken away by the reduction of the imprisonment imposable on summary conviction from four months to three months. I have not dealt with disqualification, endorsement or higher penalties for a second or subsequent conviction, as they are not relevant to the matter at issue. This reform would enable the whole question of whether or not the defendant was guilty of an offence to be dealt with at one time and would do away with the procedural difficulties which now beset sections 11 and 12. Magistrates could show by the penalty they inflict whether they regard the offence as a serious one or not and the defendant, as far as his motoring record was concerned, would be in no different position from motorists prior to 1930, the gravity of whose offence could only be measured by the penalty and not by the section under which they were convicted. It is suggested that there is nothing unusual in imposing one maximum penalty for offences which may be of varying gravity, since the punishment, for instance, for obtaining a plate of fish and chips by false pretences is the same as that for obtaining the Crown Jewels by false pretences.

While on the subject of road traffic prosecutions, I would like to ask whether section 21 of the Road Traffic Act, 1930, really serves any useful purpose. I know that it occasionally serves a useful purpose to persons *guilty* of a motoring offence because it enables them to escape punishment by reason of a failure to warn or serve a notice or by reason of some defect in a notice. But is it really of help to persons charged with dangerous or careless driving or with speeding in the way in which it is intended to help them? It is hard to believe that persons guilty of dangerous and careless driving can be assumed to remember it thirteen days afterwards, if the matter is brought to their attention by notice, but not to remember it if the notice is not received until fifteen days after the offence. It is equally absurd to suggest that a motorist, who commits an offence on the morning of January 1, is prejudiced if he is interviewed orally by a policeman that evening but is not prejudiced if he receives a written notice on January 14. It can indeed be argued that a person who does not remember his own acts is *ipso facto* guilty of careless driving since he thus shows that he cannot recognise it when he sees it. People who go past halt signs or disobey pedestrian crossing regulations or fail to stop after an accident or who are charged with similar offences to those of dangerous and careless driving, but in a different name, *e.g.*, under the Highway Act or the Public Health Act, 1925, s. 74, cannot plead that their attention was never brought to the offence within fourteen days. Nor indeed can practically any other offender for any other offence, whether of a motoring nature or not. I would suggest that section 21 is not really of much value now and that the undesirable results flowing from it exceed the desirable ones. Let it be repealed.

Yours truly,

"CLERK TO BOROUGH JUSTICES."

Books and Periodicals

Reviews:

The Law in Action. A series of Broadcast talks. London: Stevens & Sons, Ltd. 1954. vii and 89 pp. (no index). (7s. 6d. net.)

Only one of this interesting collection of talks, delivered in the Third Programme and already published in *The Listener,* is concerned with the criminal law. In it Professor Glanville Williams gives his support to the renunciation by the Court of Criminal Appeal in *R.* v. *Newland* [1954] 1 Q.B. 158, of the judge's power to create new crimes under the generic title of public mischief. Only twenty-years ago, in *R.* v. *Manley* [1933] 1 K.B. 529, a totally different outlook—in respect of this and other doctrines of the criminal law—permeated the minds of the then members of the Court of Criminal Appeal. In his book on *Criminal Law,* pp. 456–7, the writer refers to the number of decisions which purported to follow the lead established in *Manley.* Today, however, the notion of punishment based upon offences created by the courts and not by Parliament receives scant support and it would be interesting to hear the writer's views as to the factors which contributed to this welcome change of heart on the part of the judiciary.

As Professor Glanville Williams points out, the decision in *R.* v. *Newland,* though renouncing public mischief as an independent crime, still upholds the legality of a charge of conspiracy to effect a public mischief. Incongruous as this may appear, the writer's strong objections to this form of criminal conspiracy are based on the breadth of the dicta used in the earlier authorities. These, he maintains, afford legal precedent for unpredictable extensions of the criminal law. The present mood of the judiciary is well known, but judges come and go and it remains to be seen whether the writer's misgivings are well founded.

J. Ll. J. Edwards.

The Game Laws Simplified. By Inspector C. E. Johnson. London: The Police Review Publishing Co., Ltd. 1954. 64 pp. (2s. 6d.)

This small book is intended to provide police officers and others whose duty it is to enforce the Game Laws with a summary of those laws in a convenient form.

The various offences are described in a clear and straightforward manner and practical hints are given as to the evidence necessary to support the various charges. The powers of the police are fully discussed and warnings are given throughout of the pitfalls to be avoided. Forms of offence headings are provided for all the usual charges and there is a very useful table showing to what game and other birds and animals the various Acts apply. It should be noted however that certain passages in the book will have to be read subject to the Protection of Birds Act, 1954 (see above p. 638), when that Act comes into force on December 1, 1954.

The Game Laws are a topic on which the village policeman is the recognised authority and, with the book to refer to, it will be seldom indeed that he makes a mistake. The book is astonishingly good value for money, and it should be read and mastered by every young officer who is expecting a spell of duty in a rural area, and it is well worth a place on any country solicitor's mantelpiece.

Clifford Walsh.

Scotland Yard. By Sir Harold Scott. London: Andre Deutsch, Ltd. 1954. 250 and (index) 6 pp. (16s. net.)

Readers will no doubt be familiar with pictures of very small people looking up at very tall London policemen and saying "Aren't your policemen wonderful?" Sir Harold Scott's book on Scotland Yard gives facts which will enable the answer, "Yes, most certainly," to be given to the question.

Sir Harold Scott, a civil servant who had spent seven years as a Chairman of the Prison Commission, brought to his post as Commissioner of the Metropolitan Police views different from those of his predecessors who had, usually, been high ranking officers of the armed forces.

In 1938 the strength of the Metropolitan police was 19,500 and was at that time below establishment; in 1945 the strength was 12,000. Even if the strength had been as high as the pre-war figure it would have been inadequate for dealing with the increase in crime after the war. As it was the strength was totally inadequate to deal with this post-war crime, and, as the author says, the force had to "make do and mend," in dealing with its problems. The problems which the author set out to tackle in coping with the duties placed upon a depleted force when he was appointed in 1945 were pay and pensions, and housing and promotion. Whilst there have undoubtedly been increases in pay these were obviously not sufficient to bring in the number of men needed, and it seems clear that the author does not consider that pay is yet adequate. The strength is now nearly 16,000 but recruitment has recently not covered losses. The housing problem has been improved but it seems only in the teeth of lack of co-operation from certain local authorities. As regards promotion, the author introduced a system of written examination together with a scheme of selection from men of ten years' service; he also reorganised the ranks.

It is quite obvious that it is a short-sighted policy to permit huge sums of money to be wasted every year on crime when it is clear that smaller sums paid to the police forces would considerably reduce this wastage.

Sir Harold Scott outlines the organisation of Scotland Yard and illustrates the work of various departments by describing some well-known cases, *e.g.*, the murder of Alec d'Antiquis, the Craig and Bentley murder, the Haig murder, the Heath murder, the Christie murder, the theft of the Stone of Scone, and many other crimes which have achieved great publicity.

In dealing with the shortage of manpower he refers to team policing which has been tried in London and has been successful enough to warrant expansion, the use of wireless cars and of police cadets.

The use of tape recording would, he considers, be of little value (a conclusion that was reached in the article published at [1954] Crim.L.R. 96).

Sir Harold Scott deals with all aspects of the work of Scotland Yard, but from the lawyer's point of view it would have been of interest to have known more of the functions of the Solicitor's Department and its connection with the rest of Scotland Yard.

This book is very interesting and well worth reading, although it will provide little new for the keen student of police and criminal affairs.

PETER ALLSOP.

The Fingerprint System at Scotland Yard. By Frederick R. Cherrill, M.B.E. London: Her Majesty's Stationery Office. 1954. 170 and (index) 3 pp. (21s. net.)

Ex-Chief Superintendent Cherrill, the writer of this book, was for thirty-three years a member of the Fingerprint Bureau at New Scotland

Yard. For many years he was in charge of the bureau and retired in 1953 after a most distinguished career.

The Fingerprint System at Scotland Yard is a highly technical work and deals fully with the classification and filing of fingerprints for the main and single fingerprint collections and the extension of the main fingerprint classification. The examination of scenes of crime for fingerprints, fingerprint photography and other aspects are dealt with less fully.

This work is produced with the approval of the Home Office and it can, as far as it goes, be taken as an authoritative textbook on fingerprint identification. Some fingerprint experts will not agree with all the views expressed by the author but students and newcomers will find it a reliable source for reference. The book is illustrated with some 200 charts, diagrams and photographs.

J. B. Firth.

"*Lifer.*" By William Doyle. London: Lowe and Brydon (Printers), Ltd. 1954. 238 pp. (12s. 6d. net.)

Eighteen Months. By Anthony Heckstall-Smith, D.S.C. London: Allan Wingate. 1954. 240 pp. (10s. 6d.)

McGraw prison in America was reputed to be one of the toughest in that country. William Doyle, who had been sentenced to life imprisonment for killing a policeman, was therefore considered to be a fit subject for treatment in McGraw. *Lifer* is the book which Mr. Doyle wrote when he was let out on parole after serving twenty years of his sentence. The author is not an educated man but the book is not on that ground unreadable. The author was assisted by a journalist, Mr. Scott O'Dell, who suggested some reorganisation and deletions, which were agreed to.

The book is mainly concerned with the administration at McGraw prison during the time of a particularly unpleasant Captain of the Guard: the Governor appeared to be a nonentity when compared with the Captain. There are a number of isolated incidents in the book, more or less ingenious escapes, a riot and attempted mass breakout, the killing of other prisoners, the gangs and the fearful control which they held over other prisoners, and, towards the end, the killing of the Captain of the Guard who had by then become Governor of the prison.

Mr. Doyle is no penologist and attempts to draw no conclusions from the treatment he received in this tough prison. Certainly some of the characters he mentions returned on other sentences after being released but it would seem that he at least was sufficiently impressed by his treatment not to wish to return there. For the English reader a glossary of terms would have been helpful although by the time your reviewer had finished this book he understood most of the terms such as "Wobblies" and "chuck horrors."

A very different type of book about prison life is *Eighteen Months,* written by an educated man and journalist who, after being implicated in some frauds, was sentenced to 18 months' imprisonment. The author spent part of his sentence at Wormwood Scrubs and the greater part at Maidstone. Mr. Heckstall-Smith was given during his year in prison full opportunity to study the objects of penology. Of his period in Wormwood Scrubs it is perhaps sufficient to say that he agrees with the statement of Sir Harold Scott that the only thing to do with the great Metropolitan prisons is to dynamite them. He also considers the prison to be a scandal in need of public exposure; has it not already been exposed?

The author does not subscribe to the optimistic view stated by Sir (not Mr.) Lionel Fox that a carefully selected minority of recidivists would be influenced for good if mixed with a majority of better men. The evidence he gives certainly supports his view that the indiscriminate mixing of borstal boys, perverts, thieves, etc., is unlikely to improve any of them.

In damning the penal system of this country Mr. Heckstall-Smith cites the case of Paddy. Paddy was a victim of "prison rot," a disease whose symptoms of mental inertia, inability to concentrate, loss of self-respect and dependence on others lead to mental paralysis and becoming "institutionalised," *i.e.*, a "zombie." Paddy at twenty was suffering severely from this disease and the author considered that his nine years' living in approved schools and borstals had destroyed all his initiative; he was serving three years' imprisonment for escaping from a borstal and holding up a woman at the point of a gun, unloaded. The blame for Paddy's condition is put initially upon his parents and then indiscriminately upon the law, magistrates, judges and borstal and prison systems. The author's solution for the problem of Paddy is that before he reached Maidstone he should "have been sent to some farm, deep in the country, where he would have been cared for with kindness and given nourishing food".

The author considers many aspects of prison life, such as the effect on a prison, officers and prisoners alike, of a hanging; the homosexuals, who evidently rarely indulge in their vice in prison; the intelligent and cultured man, for whom the horrors of prison cannot compare with the shame and scandal of his arrest and trial (a matter mentioned by the late Lord Samuel); and flogging: in this the author, agreeing with the Lord Chief Justice ("the most hated man in the world of crime"), is in favour of it for cosh boys and those guilty of crimes of violence and raping little children.

The author's position in the education office of Maidstone gave him opportunities to talk to officials with the barrier between prisoner and official lowered; he expresses his gratitude to them but he does not spare them and in particular criticises their cynicism and defeatist attitude. But he does speak highly of Governor Vidler, who runs the prison for the benefit of prisoners and not the officers, and of the Reverend J. A. Nickels.

The sentence of corrective training comes in for criticism mainly on the ground that it is in fact the same thing as imprisonment, the prisoners go into the same prison for the same treatment, with the addition of one voluntary weekly lecture on child welfare and kindred subjects. Your reviewer is in no position to judge whether the views expressed by the Lord Chief Justice in *R.* v. *Ledger* (1950) 34 Cr.App.R. 117 or the statement of Mr. Heckstall-Smith is correct; certainly they cannot be reconciled.

This book is certainly interesting and easy to read, and a prisoner's point of view is rarely presented in such a readable fashion. Unfortunately for the justification of those engaged in the penal system of this country, who are attempting much, the answers to many of the points raised in this book can only be found by search in the, comparatively speaking, dull answers of parliamentary questions, official reports, etc. The author rarely criticises constructively and where he does so he does not follow his suggestions to logical conclusions.

PETER ALLSOP.

According to the Evidence. By Henry Cecil. London: Chapman & Hall, Ltd. 1954. 224 pp. (10s. 6d. net.)

Novels with a legal background are comparatively rare, and authors with the knowledge and ability to make that background authentic are even rarer. "Henry Cecil" conceals the identity of a county court judge who has already shown that he has both that ability and a somewhat individual line in humour. This book is about a murder trial and provides good reading. In the reviewer's opinion it is not up to the standard of the author's previous books, but it can nevertheless be recommended for those with a taste for novels not too far removed from reality.

M. W. M.

Books Received:

Questions and Answers on Police Duties. Omnibus edition. By C. C. H. Moriarty, C.B.E., LL.D. London: Butterworth & Co. (Publishers), Ltd. 1954. v and 175 and (index) 7 pp. (9s. 6d. net.)

Psychiatry and the Law. By Manfred S. Guttmacher, M.D. and Henry Weihofen. New York: W. W. Norton & Co., Inc. 1952. viii and 461 and (cases cited) 3 and (index) 10 pp. ($8.50 net.)

Stone's Justices Manual. Eighty-sixth edition. By James Whiteside and J. P. Wilson. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 1954. Volume 1, cccxxviii and 1304 pp.; Volume 2, vii and 1652 and (index) 220 pp. (Thin edition 82s. 6d. net, thick edition 77s. 6d. net.)

Articles:

Justices' Clerk, April, 1954.

Disposal of fines recovered on transfer of fine order, p. 4.

Magistrate, Vol. 10.
Bad form (technical defects), p. 137.

Scots Law Times.
Drunkenness as a defence, p. 117.

Irish Law Times, Vol. 88.
The Road Traffic Act, 1933 (Eire)—notice of intention to prosecute, pp. 123, 129.

Solicitors' Journal, Vol. 98.
Suspected persons, p. 431.
Coroners and cremation cases, p. 448.

Law Journal, Vol. 104.
Chess and the constabulary (dangerous and careless driving), p. 379.

Law Times.

Vol. 217.
Corroboration in criminal trials, p. 308.
Diabetes and the Road Traffic Acts, p. 336.

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Witness called by a judge in a criminal trial—right of cross-examination, p. 3.

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Vehicle excise licences, p. 384.
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Police Review, Vol. 62.
Malicious damage to real and personal property, p. 428.
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Protection of Animals Act, 1911, s. 11, p. 444.
Behind the iron curtain (crime in Russia), p. 478.
Higher training (for the police), p. 480.

Police Chronicle.
Road casualties and the law, June 18, 1954, p. 4.
Drunk on licensed premises, July 2, 1954, p. 2.

THE CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Insanity

The criminal law of insanity satisfies no one entirely and much of the criticism of it has been canalised into critical analyses of the Report of the Royal Commission on Capital Punishment. Two aspects of that Report have attracted particular attention, the future of the McNaghten Rules and what person or body should be given the task of applying them or whatever test is to be applied.

The Royal Commission by a majority recommended the abrogation of the Rules and that the jury should decide in each case whether the degree of mental defect is such that the accused ought to be held unfit to plead or not criminally responsible.

In a lecture delivered earlier this year and printed at page 661, Mr. Justice Devlin very carefully considered the McNaghten Rules and came to the conclusion that " they remain in 1954 as good a test of total irresponsibility as they were in 1843." He further considered that it is bad for the law that the question of diminished responsibility should be put to the jury when it is a matter which should relate to sentence and not to guilt.

" The Royal Commission and the Defence of Insanity " was the title of a lecture delivered by Professor Glanville Williams and now published in *Current Legal Problems*, 1954. The lecturer dealt with some of the amendments of the McNaghten Rules which have been proposed from time to time, particularly those suggested to the Atkin Committee in 1923 and the proposal of the minority of the recent Gowers Committee that there should be an exemption for the accused who was by reason of disease of the mind or mental deficiency incapable of preventing himself from committing the act. Professor Williams would prefer a simple question in terms of insanity or mental deficiency, but he feels that the majority recommendation of the Commission would effect a great improvement on the present law.

Professor Williams is not a whole-hearted supporter of the impartiality of the jury; he suggests that the question of insanity should be left to impartial medical assessors who "would present their report to the trial court as a reasoned written statement and not as a series of fragmentary replies phrased on the spur of the moment in answer to specific questions." The Atkin Committee considered this proposal, but, without reasons, considered it to be impossible.

Whatever the solution may be it is certainly preferable that this test of responsibility is one which should be dealt with in open court and not, as happens in effect in many cases, behind the closed doors of the Home Office. This is implicit in the Report of the Royal Commission and in criticisms of the Report; unfortunately, as no easy solution of the problem is to hand, it is likely that none will be attempted until the nettle of capital punishment, the root of the whole matter, is firmly grasped.

New criminal courts for South Lancashire

Consideration has been given to the Report of the Departmental Committee on a Central Criminal Court in South Lancashire and it is intended to introduce legislation adopting the committee's proposals in a modified form.

It is proposed that new courts should be established in Liverpool and Manchester, combining the functions of the assizes, so far as criminal matters are concerned, and quarter sessions in those cities. The recorderships of Liverpool and Manchester would be full-time, pensionable appointments. A permanent assize commission would be issued constituting all the Queen's Bench judges and the two recorders as members of the Liverpool court, and a similar permanent commission would be issued in respect of the Manchester court. Arrangements would be made whereby certain of the most serious cases would in practice be dealt with by a Queen's Bench judge. The ordinary assize commission, so far as

South Lancashire was concerned, would then relate only to civil work.

The Liverpool city justices would commit to the new Liverpool court all cases which they at present commit to Liverpool city quarter sessions or assizes, and also cases for sentence under sections 28 and 29 of the Magistrates' Courts Act, 1952; and the court would hear appeals from Liverpool city justices. Similar provision would be made as regards Manchester. Other justices in South Lancashire would commit to the new courts cases which at present they commit to the Liverpool or Manchester assizes. The Exchequer would make a contribution towards the costs of the new courts.[1]

Prisons

The institution for psychiatric offenders which is to be built at Grendon Underwood will be within the prison system and under the control of the Prison Commissioners. It will accommodate about 300 persons, including men and women, Borstal boys and girls. It is intended primarily for the care and study of persons requiring active psychiatric treatment, but some prisoners unsuitable for the observation wings of ordinary prisons will be sent there and some prisoners will be sent for research purposes. No one who is certifiable as insane will go there.[2]

There is no truth in the rumour that a prison is to be established at Stanmore.[3]

Approved Schools

Punishments in approved schools for girls are governed by the Approved School Rules, 1933. Records are kept by the headmistress of the more serious punishments inflicted and are examined by the chairman of the school managers, the school doctor and inspectors from the Home Office. Most schools have at least one room in which a girl may be isolated for a time, subject to the safeguards contained in the Rules.

All the approved schools for girls in England and Wales accommodate some girls of secondary school age.[4]

The Home Secretary is not aware of any case in which an order to send a person temporarily detained in a remand home to an approved school has not been complied with; an order authorising the detention of persons subject to an approved school order in a remand home must be renewed by the court every 28 days and so is kept periodically under review.[5]

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[1] H.C. Debates, Vol. 531, col. *90*, July 29, 1954.
[2] H.C. Debates, Vol. 530, col. *83*, July 19, 1954.
[3] H.C. Debates, Vol. 530, col. *45*, July 14, 1954.
[4] H.C. Debates, Vol. 530, col. *61*, July 15, 1954.

Juries

The Lord Chief Justice spoke recently of the strain imposed on jurors by protracted assize cases. He pointed out that this is not a problem peculiar to the Old Bailey, but is to be found all over the country, and suggested that the war time expedient of having seven jurors instead of twelve might be reintroduced.

The Home Secretary has noted Lord Goddard's comments, but legislation would be necessary before any effective changes could be made and such legislation cannot be introduced at present.[6]

Judicial appointment

Mr. Graham Rogers has been appointed Recorder of the City of Liverpool.

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[5] H.C. Debates, Vol. 530, col. *152*, July 22, 1954.

[6] H.C. Debates, Vol. 530, col. *59*, July 15, 1954.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the Editor, *Criminal Law Review*, 3 Chancery Lane, London, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Criminal Responsibility and Punishment: Functions of Judge and Jury[1]

By Patrick Devlin

For indictable offences—and I am not concerning myself with any others—the administration of the law is divided between the jury and the judge. I have taken the words " responsibility " and " punishment " to signify the two stages in which the criminal law operates, *i.e.*, trial and sentence. The first question that has to be determined is whether the prisoner is responsible to the law at all. Has he, or has he not, committed some act forbidden by the law? That is determined by the verdict of the jury. I use the wide word " responsibility " to cover not only the *actus reus* and the *mens rea*, but also the question whether the prisoner is so insane as not to be responsible for his act. If he is responsible, he is guilty, he is subject to the law and subject to sentence. The fixing of the appropriate sentence is the second stage and is generally left to the judge. I use the word " punishment " as the convenient term, though the inquiry by the judge covers every question of what is to be done with the prisoner and how he is to be treated.

The recommendation by the Royal Commission on Capital Punishment (Cmd. 8932) that the jury after a conviction for murder should decide upon the penalty is a novel idea; as Lord Asquith said in the debate in the House of Lords on December 16, 1953 : " The wisdom of centuries has committed to juries the task, and the only task, of ascertaining innocence or guilt. The determination of the punishment has always been lodged in other hands."

But the jury does play a part indirectly in the imposition of punishment, because the question left to it is not the general one whether the law has or has not been infringed, but the particular question whether a specific crime has been committed. The division of the criminal law into specified crimes of varying gravity allows the jury to fix the limits within which the punishment is to be assessed. The introduction into the law of the conception of *mens rea* enlarged this function. In the early idea of justice, before the influence of the canon lawyers made itself felt, punishment followed upon the act irrespective of the intent. If a man took another's life, his own was forfeit; if he had killed accidentally, he might hope to be pardoned but he was in mercy. The notion of *mens rea* meant that in considering the gravity of the crime, it became necessary to take into account not only the act and its consequences but also the degree of blameworthiness with which the offender acted, that is, the extent to which he desired or apprehended the consequences of the act.

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[1] This article is the print of a Special University Lecture in Laws delivered at University College, London, on March 4, 1954, including some matter which was omitted for want of time, and is published with the permission of University College, London.

Take the striking of a violent blow. It may result in the offender being prosecuted for seven different crimes, which I list with the maximum sentences against each in order of gravity as follows :—

(1) Murder - - - - - -	Death.
(2) Manslaughter - - - - -	Life imprisonment.
(3) Wounding with intent to murder -	Life imprisonment.
(4) Wounding with intent to cause grievous bodily harm - - -	Life imprisonment.
(5) Unlawful wounding - - - - -	5 years.
(6) Assault occasioning actual bodily harm - - - - - - -	5 years.
(7) Common assault - - - -	1 year.

There are other subsidiary elements which contribute to the gravity of the crime. For example, a common assault on a police officer in the execution of his duty, or with intent to commit a felony, sends the maximum up to two years, and with intent to rob up to five years. But for the sake of simplicity I shall keep to assaults which have for their object simply the infliction of violence. They can be arranged in those seven categories of gravity. It is for the jury to determine in each case which is the appropriate category, and in that way the jury controls to some extent the degree of punishment which the offender has to bear. The two crimes at the top of the list are distinguished from the others by the consequences of the violent act; it has resulted in death. At the bottom of the list the common assault is similarly distinguished from the assault which occasions actual bodily harm. In the middle, the different sorts of wounding are distinguished by the intent with which they are committed. In a similar way murder is distinguished from manslaughter. In these cases what has to be established is the *mens rea* which the particular crime requires, and that is for the jury.

Balance of control between judge and jury

The object of this lecture is to examine three ways in which, as it seems to me, the balance of control between judge and jury has been disturbed. The first is by reason of the doctrine of constructive malice. This doctrine takes away from the jury, in many cases of murder, the question whether the prisoner had a murderous intent. That is, or ought to be, a jury question. The doctrine has a corollary in cases of manslaughter with a similar effect. The second is that in the case of four out of the other five crimes (I leave out common assault) the maximum sentences prescribed have become by modern standards so high that in law it is immaterial whether the jury convicts of the greater or lesser offence. Here again the jury's function is diminished. The third is in relation to the McNaghten rules; and here it seems to me the administration of the law in attempting to escape from the rigidity of the automatic death penalty tries to put too much on the jury.

Before I examine each of these in turn, I should like to consider what has caused the balance to be upset, and what are the chief effects at the present day of the disturbance. The root cause, I think, is that while during the past hundred years at least, and probably longer, the public attitude towards criminals has been changing, the substance of the criminal law has remained the same. The common law does not alter. In relation to murder it has never fully accepted the doctrine of *mens rea*; it has never wholly absorbed, as it has in the case of other crimes, the idea that punishment should be made to fit the wickedness of a man's mind rather than the consequences of his act. Statute law, apart from some codification, has done to the substance of the law little more than to enact new crimes to deal with a particular condition of affairs, generally transitory. It is the habit of Parliament whenever a particular form of assault upon a person or trespass upon a property becomes criminally fashionable to pass an Act about it. It has done so in the manner of a householder who adds another wing or room or runs up a lean-to to serve his immediate needs without much regard to the unity of the building. The property has now become cluttered up with disused outbuildings, such as Acts against garotters, conspiracies to murder the Sovereign, drowning mines, injuring mill-ponds, destroying hopbinds, setting spring-guns, burning ships of war, obstructing ministers of religion and the like, into which the modern criminal rarely adventures. These, so far as the substance of the criminal law is concerned, are the only achievements of the great nineteenth-century movement for legal reform. The severity of the maximum sentences which Parliament prescribes attests the troubles of a past age. Factory owners, wilting under the stringent requirements of the modern Factory Acts, can console themselves with the thought that it is still today, as it was a century ago, a felony punishable with life imprisonment to damage maliciously certain articles in process of manufacture, such as stockings, hose, mohair or alpaca, and a number of other materials which I shall leave the prospective felon to find out for himself by consulting the Malicious Damage Act, 1861, s. 14.

Since the substance of the law has continued to present a solid and unyielding front, the expansion of new ideas has flowed into parts more easily penetrated. In the matter of sentence the law is generally flexible and the standards of punishment can easily be altered. Moreover, since the beginning of the century Parliament has not been inactive in making provision for the treatment of offenders; there are the Probation of Offenders Acts, the Prevention of Crime Act, 1908, and the Criminal Justice Act, 1948. But there is one sentence about which the law is inflexible, and that is the death sentence for the crime of murder. The flow which a greater elasticity at this point might have contained has discharged itself into the prerogative of mercy. In this respect the law has allowed itself to be separated from reality. The sentence which the law prescribes is in many cases no longer the sentence which the public expects to be carried out. It is not possible to have a divergence of that sort without setting up distortions in the legal system which are particularly manifested in two of the subjects which I want to discuss—constructive malice and insanity.

Prerogative of mercy

But first let me say something about this amplification of the prerogative and its effect upon the law. Justice and mercy are qualities which overlap but which are nevertheless distinct. The just sentence is the one that is adjusted to the crime itself; there can be no exact measure, but there are limits outside which a sentence is not just. If a judge sentenced a man to life imprisonment for damaging mohair or alpaca, the sentence would not be unmerciful, it would be unjust. When the Court of Criminal Appeal alters a sentence on the grounds that it is excessive, it does not do it on the grounds that the judge was unmerciful, but that he has erred in principle, that is, has been unjust. Mercy is the quality which mitigates the sentence because of circumstances special to the offender; the character of the prisoner or the hope of his reform may lead the judge not to pass the sentence which the crime itself justly merits. I do not suppose that any judge finds it necessary to keep the distinction constantly in mind, but it is none the less there.

When the law prescribes a fixed sentence, it should therefore be on the assumption that that is the only just sentence for the crime. That assumption held good for many years in the case of murder. While it was recognised that there might be circumstances peculiar to the offender calling for mercy in exceptional cases, it was generally felt that the murderer deserved to lose his life. This is probably still true of some types of murder, but it is clear that the public conscience no longer subscribes to the view that the proper penalty for *any* murder is death. The Commission says in paragraphs 21 and 22 that there is no single class of offence that varies so widely both in character and in culpability, and that no one would now dispute that for many of these crimes it would be monstrous to inflict the death penalty. In fact, the statistics over the last fifty years show that the death penalty is exacted in hardly more than half the convicted cases. The result is that the prerogative of mercy is now perforce being used in circumstances for which it was never designed, not for the exercise of mercy but for the determination of justice. The inquiry into the appropriate sentence which, in accordance with all our traditions, ought to be dealt with in open court and with the right of appeal, has to be conducted in camera and without appeal upon facts that may or may not have emerged in evidence and been tested in cross-examination. It is surprising that the castigators of the new despotism have not, so far as I know, ever attacked what is in effect an extra-judicial tribunal in Whitehall settling matters of life and death. It is, I think, the most remarkable tribute to a series of Home Secretaries and to the permanent officials who advise them, that a system which is in theory quite wrong and contrary to all our ordinary notions of the way in which justice should in practice be carried on has, in fact, been administered in a way which has given general satisfaction. There is, of course, a strong tendency in the English mind to leave alone anything that is working well. But where the life and liberty of the subject are affected it is unwise and also untraditional to trust entirely to the ability or integrity of the individual. Traditionally, we have insisted that the subject should be protected by the forms of law; that is what we mean by saying that no man shall be condemned save by due process of law. The law does not achieve that by telling those to whom it has denied justice that they can always sue for mercy.

But lawyers must bear in mind that capital punishment is a question which gives rise to many problems besides the legal one. It invades morals and ethics and touches the sentiments of many. Most people will agree that there is a problem to be solved, but no unanimity has yet been shown for any one solution, and the lawyer cannot expect that the one chosen will have regard only to legal principles. It may be, indeed, that he will have to recognise that in the present state of public feeling it is best to leave matters as they are. He might take that view while understanding and without underrating the damage done to the law. I am not concerned here to evaluate social consequences; I am considering only legal principles, and concerned only to point out the way in which they are being deflected from the true by the pressure which arises from the fixed death sentence.

Constructive Malice

The doctrine of constructive malice, as it is applied in murder and manslaughter, seems to me to be contrary to the fundamental principles of our criminal law, because it is a device for relieving the prosecution from the duty of proving the wicked intent appropriate to the crime. Let us see how the intent is normally proved.

It cannot, of course, be directly proved unless the man's own evidence about his mind is acceptable. Otherwise, it can be proved only by inference from the circumstances, and the ordinary method of inquiry is to ask what were the probable consequences of the act. Thus, the standard test of a man's mind in the commission of an act is the foreseeable consequences. There are three states of mind that may be predicated about foreseeable consequences. One inference is that a man must have applied his mind to the consequences which in fact happened and to have decided that they would probably happen; in that case, for the purposes of the law he intended them to happen, and it does not matter whether he wanted them to happen or not. That is the first class and it is criminal intent in the strict sense. The second inference is that he applied his mind to them and without concluding that they would probably happen, his state of mind was that he did not care whether they happened or not. That is recklessness; it falls into the category of negligence rather than intent, and it can be called criminal negligence. The third is that he failed to apply his mind to the consequences at all. That is negligence in the sense of inadvertence; it can be called civil negligence, and it is generally irrelevant in crime. Of course, the distinction between these three different states of mind depends upon the degree of thought that a man gives to what he is doing. If a man thought carefully before he did any act, he would always appreciate what the consequences would probably be; for by definition probable consequences are those which the reasonable man foresees as likely. But many crimes of violence are committed without careful thought; the mind is not properly applied to the consequences; and the jury therefore has to infer to what extent the prisoner appreciated them.

If these principles were applied it would follow that before the prisoner could be convicted of murder, he must, as in every other case in which the law requires *mens rea*, be found to have had the intent to murder. But this is not the law. The law has not escaped from its original notion that a man who takes a life must pay for it with his own. Consequently, the relevant state of mind has been extended by implications and constructions far beyond the simple intent to kill. The law requires what is known, paradoxically enough, as "malice aforethought." There is nothing to be gained by the elucidation of that phrase. Every student of criminal law has learnt, and every juryman who has taken part in a murder trial has been directed, that malice does not mean malice and aforethought does not mean aforethought. It is simpler to deal with the point by saying that express malice is the ordinary intent to murder, and that the law implies malice in certain other circumstances which can be put into three categories.

The widest is that malice or intent is to be implied if death results while the prisoner is in the act of committing any felony, for example, damaging mohair or alpaca. In theory, this is alarming. But although many old authorities can be cited in support of this principle, I doubt if it would now be applied as the law.

Intent to do violence

The second category is if death results in the course of committing a felony of violence, or a felony in which measures of violence are used, *i.e.*, pointing a loaded revolver in the course of a burglary. This is the modern law and is laid down in *R.* v. *Jarmain* [1946] K.B. 74. There may be put into this category also the principle that if the act of violence is one committed in the course of resisting arrest, it is immaterial whether it was felonious or not.

There is now a considerable body of opinion that considers even this limited category as too wide; and in the report of the Royal Commission on Capital Punishment (para. 111) it is recommended that it should be reduced to cases of real or substantial violence, that is, to cases in which there is an intent to cause grievous bodily harm. This is the third and narrowest category. Indeed, the Commission thinks that this recommendation involves the abolition of constructive malice altogether. The Report (para. 94) says: "A person may therefore properly be convicted of murder if he has caused death either by an act intended to kill or do grievous bodily harm, or by an act likely to cause death or grievous bodily harm, and committed with reckless disregard of the consequences." The Commission takes the view that there is nothing constructive about a rule in this form. I respectfully differ from them. A rule in that form mixes intent with recklessness, and assumes that because a man does an act that is likely to cause grievous bodily harm, he intends murder. It may be that the difference lies partly in the use of the word "constructive." I take an intent to be "constructive" when there is imputed to a man a state of mind other than his actual state of mind. The difference does not, however, lie merely in words, since the Commission recommends the retention of the law as they stated it. Indeed, they state (para. 472): "We believe that few people would dispute the propriety of making the definition of murder wide enough to include cases where death is caused by an act intended to cause serious bodily injury." I think that the number of disputants would be greater than the Commission supposes. Most cases of murder which come before the courts are cases of death by sudden violence manifestly done by the accused: in many of them the only really debatable point is whether he intended death to result. Under the existing law the jury is properly directed to ignore that question, and that it need only be satisfied that there was an intent to cause grievous bodily harm. On that, the facts generally speak for themselves, and if considered dispassionately would lead almost automatically to a verdict of murder; in an attempt to avert this the defence resorts to suggestions of accident, provocation, or mental black-out. Thus, what many people would take to be the fundamental question, and the one which ought to be answered by the jury if the nature of the crime and the degree of gravity is to be determined by the appropriate tribunal, is not put to the jury at all.

The area of this form of constructive murder is widened because of the meaning which lawyers have constructed for the term "grievous bodily harm." This is not, as a layman might think, confined to cases of really grave injury. Grievous in the eyes of the law means any harm which seriously interferes with health or comfort. Thus, quite a small blow, which was not designed to have fatal consequences but from which death followed as the result of an accident, might amount in law to murder. Murder by pin prick is not a legal impossibility.

It is interesting to note that constructive murder is a crime you can commit but cannot in law attempt. This is illustrated by *R.* v. *Whybrow* (1951) 35 Cr.App.R. 141. That was a case of attempted murder, and the jury were directed that it was irrelevant for them to consider whether the prisoner intended to kill his wife so long as they were satisfied that he intended to cause her grievous bodily harm. The Court of Criminal Appeal held this direction to be wrong: for the doctrine of constructive malice does not apply in attempted murder, in which the prosecution must prove the actual intent to murder. This apparent illogicality not only does something to discredit constructive malice, but also demonstrates that there is no difficulty in practice—no more, indeed, than there is in any other branch of the law—in requiring proof of the intent to commit the crime itself. That proof has also, of course, to be given in a charge of wounding with intent to murder. The existing law has the curious result that to attempt murder is generally more blameworthy than to commit it, for in the former but not in the latter case there must be proved the intent to kill.

The other side of the argument is that a man ought to know that if he deliberately commits an act of grievous bodily harm, he runs the risk that death may result. If he chooses to run the risk of endangering life, ought he not to be held liable for the consequences? The answer, I think, is that he is in any event held liable for the consequences, that is to say, he may be found guilty either of manslaughter or causing grievous bodily harm with intent, and for either offence may be sentenced to imprisonment for life. The question is not whether he should be exempt from the consequences, but whether his degree of guilt should be equated with that of a man who deliberately intended the consequences. There may, of course, be cases where the legislature considers that a man who runs the risk of causing death should suffer the supreme penalty, whether he intended to kill or not, for example, where a man kills a police officer while resisting arrest. Cases of this sort should, I think, be treated as exceptional, and a special penalty prescribed for them without calling them murder.

Intent to murder

Apart from these exceptional cases, it may be that the majority would support the view that the death penalty should be reserved for cases in which there has been an intent to murder; and that cases of wrongdoing, which result in death, where there is no intent to murder, can be adequately punished by life imprisonment. I have referred to the views of the Royal Commission, and it is only fair that I should point out that they were concerning themselves with the practice of the law and not with its theory. They rely, as in practice they are entitled to do, upon a fair prosecution, a discreet judge and a merciful Home Secretary. But I am concerning myself now with the theory of the law; and in theory I see no real answer to the view that the right criterion in murder is that which is generally applied in the criminal law, and which leaves no room for constructive knowledge or for any other constructive state of mind. Of course, in any form of proof a man's state of mind may have to be inferred, but that is not the same thing as saying that it has to be constructed. If the proper inference on the facts is that a man knew and appreciated that death would be the consequence of his act, he should be guilty of murder; but if that is not the proper inference, if his state of mind cannot be shown by the ordinary processes of proof to harbour the necessary intent, the construction or imputation or pretence of it is quite foreign to all our general conceptions of criminal liability.

That constructive malice should deprive the jury of part of its proper function as the judge of fact is, in the case of murder, doubly objectionable, since the decision upon sentence is not made by the judge but is reserved for the Home Secretary. The question whether the prisoner had a murderous intent must often be one of the most important to be answered in considering whether the appropriate punishment is death. I should not think it right that it should be taken from the jury and left to the judge. But if it were, it would be dealt with in open court, with witnesses examined and cross-examined upon it, and with the opportunity of an appeal. Under the existing system, it falls to be determined by the Home Secretary who sees and hears none of the witnesses. He has a transcript of the evidence; but the evidence may not be directed to the points he has to consider, and there can be no certainty that all that is material to them emerges at the trial.

The report of the Royal Commission shows the immense difficulty that there is in devising any satisfactory substitute to the existing system. But I think myself that if the illogical excrescences on the law of murder that have grown out of the doctrine of constructive malice were to be removed, there would be a great improvement. The determination of one most essential fact, namely, the intent to murder, would be taken out of the hands of the executive and restored to the jury; and the exercise of the prerogative would then correspond more closely to the act of clemency which it was designed to be.

Constructive manslaughter

Manslaughter is uncomplicated by the death penalty and the exercise of the prerogative but essentially the point is the same. It is or should be a serious crime, for it carries the maximum sentence of imprisonment. But in fact most convictions for manslaughter are not for wicked and reckless killing; those that are not cases of murder reduced by provocation generally arise out of accidental killing. The constructive element in the law is that if death arises as the result of any unlawful act it is manslaughter. It is not uncommon to find a prisoner charged with manslaughter because he struck his opponent a blow which he could not strictly justify and which, in a quite unforeseeable way, caused his death. It is not, therefore, at all uncommon to find manslaughterers discharged absolutely or bound over. In a recent case a farmer on a main road was shooting at crows on an adjoining field and a bullet entered the head of a passing motorist and killed him. Most people would agree that the vital fact to be determined in that case, before the gravity of the crime could be assessed, was whether there was a wicked recklessness about the shooting. In fact, if the law had been strictly applied, that question would never have arisen, for under the Highways Act, 1835, s. 72, it is unlawful under a penalty of 40s. to fire off any gun within 50 feet of the centre of any carriageway or cartway, so that there was strictly speaking no defence at all. In passing sentence, if that course had been taken, the judge would have had to find a fact that really fell within the jury's province.

Motoring offences have caused serious inroads to be made into constructive manslaughter. Before the case of *Andrews* v. *D. P. P.* [1937] A.C. 576, if a man was driving with the utmost care but at 31 miles per hour in a restricted area, and knocked down and killed a careless pedestrian he might have found himself indicted for manslaughter. At least it would have seemed obvious that, if the unlawful act which he was committing was dangerous or reckless driving and death resulted, he would be guilty of manslaughter. But in *Andrews*' case the House of Lords decided that that was not so and that to constitute the offence of manslaughter a higher degree of recklessness even than that required for reckless driving must be found; what that higher degree is forms the subject-matter of perhaps the only obscure speech that the great Lord Atkin ever made.

Wounding

Where the act of violence does not result in death, there are on my list five offences; and the determination of the appropriate one and so of the gravity of the act is left to the jury. Wounding with intent to murder and with intent to cause grievous bodily harm are thought by the law to be of equal gravity, which in the light of the legal definition of grievous bodily harm is hardly justifiable. There are three classes of wounding followed by the two classes of assault. The term " wounding " is hardly significant. Any breaking of the skin is in law a wound; and, anyway, the statutes concerned prescribe a number of other ways of inflicting injury besides wounding. Indeed, there is a comprehensive offence of causing grievous bodily harm with intent to cause grievous bodily harm. The operative distinction is therefore in the intent; and in practice the most important of these distinctions is between wounding with intent to cause grievous bodily harm and unlawful wounding, that is, wounding without the specific intent. If the law extended to wounding the notion of constructive malice, a jury would be directed that if a man struck a blow severe enough to cause serious injury to health, he must be deemed to have intended to do grievous bodily harm. That, I think, was the direction that probably used to be given. It was based upon the doctrine that a man must be presumed to intend the natural and probable consequences of his act. If that doctrine were now applied, it would mean that the distinction between the two classes would be simply whether the wound was a trivial one or not; and as cases of trivial wounds are not sent to sessions or assizes, the distinction would in jury cases be ineffective. Most of the offences in which the distinction has to be drawn arise out of a brawl of some sort, and the jury is generally directed that if they think that the blow was struck recklessly and without proper appreciation of the circumstances, perhaps because the prisoner was inflamed by quarrelling or by drink, they would be justified in finding that the more serious intent was not proved. In short, grievous wounding is to unlawful wounding what murder ought to be to manslaughter.

Sentences

The objection may be made that, according to modern penal notions, the sentences prescribed by law are so high that these distinctions have become irrelevant. Does not, for example, the five years' maximum for unlawful wounding allow the judge in most cases to do what he likes anyway? I certainly think that there is little justification for keeping a life sentence as a maximum for grievous bodily harm. It must be a very long time since any sentence exceeding fourteen years has been passed for that offence, and surely intent to murder and to cause grievous bodily harm ought not to be treated as equally serious. In practice, of course, a judge will always pass a lower sentence if the jury has found a lesser offence. But here again it is, I think, important that the matter should not be left entirely to the discretion of the judge. There is a strong case for an overhaul of the sentences prescribed for every class of crime and for a new scale more in keeping with modern ideas, and thus giving full effect in law to the jury's finding on the degree of guilt.

The strength of the case for an overhaul is, however, diminished by the fact that the degree of guilt now plays a smaller part than it did in determining the sentence. When the sole object of the sentence was to punish, the degree of guilt attached to the crime to be punished was obviously of the first importance. But in so far as the objects of the sentence are to reform the criminal or to protect the public, the character of the prisoner is at least as important as the gravity of his crime. I cannot afford in this lecture to embark upon so large a topic as this. It may be that the criminal law will, in the future, tend to adopt more and more types of sentences, such as corrective training and preventive detention, in the imposition of which character counts for more than the crime. But that does not destroy the argument that so long as specific crimes have different sentences attached to them, those sentences ought to be such as are in the opinion of the community within the range appropriate to the crime.

Insanity

I have dealt a little scantily with the topic of wounding and assaults because I want to leave myself time to enlarge on a matter which I think to be of greater importance, and that is the question of responsibility as it enters into the criminal law on insanity, and the part that the jury should play in that. As everyone knows, or ought to know, there is no such thing as a legal definition of insanity; and any person who reads the McNaghten Rules with the idea that they draw what the lawyers consider to be a hard-and-fast line between sanity and insanity is bound to be disappointed with them. The conception of insanity for the purposes of the law varies according to the subject-matter. Different tests are applied according to whether the question is one of responsibility or one of testamentary capacity, or one of being unfit to plead or of being in a condition which ought to be certified under the Lunacy Acts. The McNaghten Rules frame questions for the jury to answer in order that they may determine whether the prisoner is criminally responsible to the law. That, as I said at the beginning of this lecture, is the dividing line between judge and jury. There are many cases of mental abnormality, by which a man's sense of responsibility is gravely diminished. That, under our system, is a question for the judge and not for the jury, or in cases of murder for the Home Secretary who, in effect, stands in the place of the judge. The jury can only convict or acquit. If they acquit the prisoner he is free of the law altogether, and they should therefore only be invited to acquit when the accused is *wholly* irresponsible for his acts. Do the McNaghten Rules achieve this; and if not, how should they be altered so as to allow the jury to exercise its proper function of determining responsibility?

Before I seek to answer this question, let me notice some peculiar features about our procedure in cases of insanity which I think tend to obscure the essential truth of what I have just been saying. One of the notions with which our law is bedevilled, just as it is by constructive malice, is the notion, which we have not yet really got rid of, that there is something wrong and blameworthy about becoming insane. The old term "criminal lunatic," in use until 1948, shows what we thought; although *ex hypothesi* the accused was not responsible for what he had done, we called him a criminal as well as a lunatic. This attitude is manifested in the law in three ways.

Burden of proof

The first is the rule that it is for the defence to prove insanity and not for the prosecution to prove responsibility. I shall comment later on the historical justification for putting the rule in this form. For the moment, I want to consider its practical effect under present conditions. One of the effects of insanity may be to make a man incapable of forming the intent necessary for the crime. Likewise, one of the effects of drunkenness may be to produce an incapacity of mind which prevents the formation of the criminal intent. In the case of drunkenness the prosecution fails if it cannot prove *mens rea* : *D. P. P.* v. *Beard* [1920] A.C. 479. It seems illogical that a person whose misfortune it may be to be insane should be in a worse position in this respect than one who has got himself drunk. The point is more theoretical than practical. I do not think that an alteration in the law as to the burden of proof would make much practical difference. At present, the jury is told that it is for the prosection to prove the criminal act and for the defence to prove insanity, but that the burden of proof on the defence is lower than that on the prosecution, it being sufficient if they prove insanity on the balance of probabilities and not beyond a reasonable doubt. I do not believe the jury pay much attention to all this; I think, in the end, they always ask themselves whether the prosecution has satisfied them that the man was not mad. But it would be an advantage to get away from the rather confusing direction about the burden of proof.

Verdict

The second peculiarity is the contradictory verdict of guilty but insane. This verdict was held in *Felstead* v. *R.* [1914] A.C. 534 to amount to an acquittal. The verdict means (I hope this is not an unfair paraphrase of what Lord Reading said at p. 542) that the jury would have found the accused guilty if it had not been established that he was not guilty. Before 1800 under the common law an insane prisoner was simply acquitted. After that year and until 1883 the verdict was still an acquittal, but given specifically on the ground of insanity. The last verdict of Not Guilty on this ground was given in 1882 in the case of Roderick Maclean, who discharged a pistol at the person of Queen Victoria and was tried for high treason. The Queen (Sir Herbert Stephen recorded in a letter to *The Times* of December 15, 1920; see also Theobald on *Lunacy*, p. 250) was displeased by the verdict of Not Guilty; she had seen the pistol fired herself and she said therefore that the verdict ought to begin with the word "guilty." Her Majesty's advisers, manifesting a devotion to the principle of *mens rea*, which subsequent Ministers of the Crown have not always shown, endeavoured to expound the doctrine to her, but were unsuccessful. The circumstances were explained to the leaders of the Opposition and the section altering the verdict was allowed to go through without controversy. This accounts for the verbal difficulties which Lord Reading was endeavouring to surmount in the passage I have cited. Most people will note with satisfaction that the Royal Commission (para. 459) recommends the amendment of the verdict.

Sentence

The third peculiarity is that since 1800, though not before, a person who is in substance acquitted on the ground of insanity is nevertheless ordered to be detained until the Queen's pleasure be made known, which means as long the Home Secretary thinks fit. Of course, a person whose insanity has caused him to commit a violent act or makes him likely to do violence ought to be restrained; but that can be done by ordinary process of law, and subject to those safeguards against indefinite detention which the ordinary law allows in the case of non-criminal lunatics. It may well be desirable that a court which has heard a charge of violence where there has been an acquittal on the ground of insanity should have power to make there and then whatever order is appropriate under the ordinary law. But it cannot be desirable that an order for indefinite detention, depriving the acquitted person of all the protection of the ordinary law, should follow automatically. It is bound to give rise to a popular notion, especially when coupled with the verdict of guilty but insane, that the insane man is in some way being punished for an act for which he is not responsible. Indeed, it is not clear that he is not being punished. Whether or not a lunatic is detained by the Home Secretary under an order of this sort for any longer period than an innocent lunatic would be under the ordinary law, I do not know. But it is certain that if he is, there is no means of redress. Here, again, people who rightly view with the greatest anxiety the arbitrary powers of detention that Secretaries of State were given under Emergency Regulations, might well devote more attention to the unlimited powers which the Home Secretary is given in a case of this sort.

There is another point. The fact that a verdict, that is in substance an acquittal and therefore unappealable, is followed by an order for detention might cause a miscarriage of justice. "Suppose," Lord Parker said in the course of the argument in *Felstead* v. *R.*, at p. 538, "there is no evidence of crime but evidence of insanity and the jury find the accused guilty but insane?" The Attorney-General answered that that raised a question of policy, not of construction of the Act; if that means anything, it means that it was the policy of the legislature that an insane person against whom there was no evidence of a crime should be subject to indefinite detention as a criminal lunatic. If the defence of an admitted lunatic was that he was ten miles away from the scene of the crime, a complaint that his defence had not been properly put to the jury could not be heard and determined by any court of law. No doubt such a complaint would be determined by the Home Secretary, who would intervene if he thought right; there would then be another example of justice being left to the executive because the judiciary were unable to administer it.

Analysis of the McNaghten Rules

Once it is made clear that the function of the jury is conviction or acquittal the issue becomes, I think, a great deal plainer, and there would be less complaint of the narrowness of the McNaghten Rules if it were realised that the alternative is not a lesser form of punishment but freedom from answerability to the law. Are there people who should not be made answerable to the law at all, but yet are covered by the McNaghten Rules? If so, then the McNaghten Rules are not doing their job. But if the accused, however mentally abnormal, is deserving of some punishment, be it a week or a month's imprisonment, then they are; because once it is granted that a man ought to have some punishment the fixing of it is not a matter for the jury. The whole question has unfortunately become obscured by the form of the verdict, the power of indefinite detention and the automatic death penalty; all this gives the impression to the layman that anyone who cannot bring himself within the McNaghten Rules is someone whom lawyers think ought to be hanged.

The law of insanity at a criminal trial is governed by statute. It is contained in the Trial of Lunatics Act, 1883, s. 2 (1), which provides that where "it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict. . . ." The question is, therefore, whether the accused was responsible for his act at the time when it was done; but the phrase "according to law" which follows "responsible" introduces as the tests of responsibility those formulated in the McNaghten Rules.

Let me remind you of the words of the principal rule: "To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."

The rule requires a defect of reason from disease of the mind which must affect the accused's knowledge in one or two ways, either

(a) of the nature and quality of the act, or
(b) that the act was wrong.

The first part is practically obsolete. There are nowadays few lunatics at large, and anyone who does not know the nature and quality of his act ("quality" means, it has been settled by authority, "physical quality") cannot know at all what he is doing, is mad in the popular sense, will probably remain mad until the trial, and so will be found unfit to plead at all. But even if this first part were not practically obsolete, is it saying any more than that a criminal intent is necessary for conviction? For if a man does not know the nature and quality of his act, he can hardly be held to have formed an intent about it. The first part, therefore, appears to be only a particular statement of the doctrine of *mens rea*. But, one may ask oneself, since the prosecution has always had to prove *mens rea*, why was this part of the rule ever constructed, and why does it create a presumption which apparently shifts to the accused the burden of proving the absence of *mens rea*? If the rule is merely a way of making the case harder for an insane prisoner than it is for a sane one, it would certainly begin badly. But the answer is, I think, that in 1843 the prosecution had in all cases to prove any sort of *mens rea* by means of a presumption, and to put upon the accused the burden of displacing the presumption. The presumption that governed the ordinary case was that a man intended the natural and probable consequences of his acts. This presumption as a doctrine of law has now disappeared. The most recent criminal case in which it was put in its place is *R.* v. *Steane* [1947] 1 K.B. 997. At p. 1004 Lord Goddard C.J. took as an example the intent to do grievous bodily harm: he said that the prosecution must prove the intent upon the totality of the evidence. This is an interesting example of the effect of a procedural alteration upon the substance of the law. The Act of 1898 which permitted the prisoner to give evidence on his own behalf is in form procedural. But since before 1898 the prisoner was not allowed to say what was in his own mind, and could not be cross-examined upon it, it was necessary in practice to proceed upon the presumption that he intended the natural consequences of his act. It would not be much use telling the jury to have regard to the totality of the evidence if it did not include the accused's own account of how he came to do the act.

Another alteration that is not even procedural has had a similarly profound effect. It is now the invariable practice for the accused to be invited by the police to make a statement as soon as may be after his arrest, and for the statement to be put in evidence whether it is for or against him. In the ordinary crime of sudden violence the arrest generally follows soon after the offence, and so in his statement the accused often says almost contemporaneously what he did or did not mean to do when he struck the blow. There is therefore usually at the end of the prosecutor's case sufficient material showing what was in the mind of the accused to make the presumption unnecessary.

I have already noted the kinship between this presumption and the presumption of sanity. There is a kinship too between this presumption and the doctrine of constructive malice; they both rest upon an imputed state of mind. All three were indispensable tools in the hands of the prosecution so long as no direct evidence of intent was available. "The substance of the law is secreted in the interstices of procedure." The secretion has been at work since 1898, and has now destroyed the presumption of intent. But the other two are so firmly embedded that it may need legislation to remove them. I have strayed very far from the McNaghten Rules. My apology for the digression is that it is always fascinating to unearth a common root for weeds that on the surface are far apart.

Meaning of "wrong"

As I have said, it is the second part of the rule that under modern conditions is the operative part. Did the accused know that what he was doing was wrong? I pause on the word "wrong," for there has recently been a difference of judicial opinion about it, illustrating what I think is the true question which the rule requires to be answered. In *R.* v. *Windle* [1952] 2 Q.B. 826, a husband killed his wife by giving her an overdose of aspirins. On his arrest shortly after he said: "I suppose they will hang me for this." At the trial the medical evidence on both sides was agreed that the prisoner knew that he was doing an act which the law forbade. The defence submitted that the prisoner nevertheless thought, owing to his insane condition, that what he was doing was right and was something which he ought to do. The Court of Criminal Appeal held that wrong meant contrary to law, and accordingly that there was no evidence of insanity. In *Stapleton* v. *R.* (1952) 86 C.L.R. 358, the High Court of Australia did not accept that conclusion and differed from the Court of Criminal Appeal in its reading of the authorities. The High Court held that wrong meant contrary to "principles of general morality" or "the standards adopted by reasonable men."

I have not the time to examine the most interesting review of the authorities contained in the High Court judgment, nor would it be to the point if I did. For I have referred to this case merely as an illustration of principle. I believe that if the matter were entirely free from authority, the decision of the Court of Criminal Appeal would still be right in principle. If you ask yourself: "Ought a man who is insane enough not to be able to appreciate general principles of morality or the standards adopted by reasonable men, to be hanged?", the reply must, of course, be: "No." But if you ask yourself what I believe to be the true question: "Ought he to be made answerable to the law?", the reply should, I think, be "Yes."

I do not, of course, say that an ignorance of moral principles or a failure to distinguish between good and evil is irrelevant to the jury question. It suggests mental incapacity in a high degree; so does a failure to distinguish between "yes" and "no," black and white or chalk and cheese. All these tests are relevant in the first stage of the inquiry that determines whether there is a defect of reason due to disease of the mind. But the defect is not by itself enough. It must be such as to destroy responsibility. It is to that that the further words "not know he was doing what was wrong" are directed. The responsibility that has to be destroyed is responsibility to the law; and it is therefore knowledge of the standards prescribed by the law and not of any other standards that is relevant. Knowledge of the concept of good and evil, of general morals or reasonable standards, is no more nor less, relevant than is knowledge of the concept of "yes" and "no." It may be said that an insane belief in the moral righteousness of an act excludes moral blameworthiness, but that is not the point. The question for the jury, whether it is posed under the law of insanity or under any other branch of the law, never has anything to do with morals or reasonable standards save in so far as they are embodied in the law. Sane men may think that killing in certain circumstances, such as to end pain or rid the world of a pest the law cannot catch, accords with principles of general morality and with the standards of reasonable men; such a view, however honestly held, is a bad defence for a sane man; it does not make it a better defence because it is held by an insane man. Conversely, sane men may think that capital punishment and killing in war are morally wrong. The law can take no account of such judgments whether they be formed by the sane or the insane. I do not see how an accused man can be heard to say that he knew he was doing an act which he knew to be contrary to law, and yet that he is entitled to be acquitted at the hands of the law. Guilt, whether in relation to the McNaghten Rules, or any other rules, means responsibility in law. Punishment is another matter.

Answering the question of responsibility

Leaving aside this controversy, or rather accepting in relation to it the decision in *R.* v. *Windle*, for I am dealing with the law of England, what does the second part of the rule amount to? It presupposes that the accused is capable of forming a guilty intent, but not of doing so rationally. Whether because of delusion or other disease of the mind he does not appreciate that what he is doing is illegal. Medical opinion appears to accept that so far as defects of reason are concerned the McNaghten Rules are adequate for their purpose. Indeed, the contrary seems to me unarguable. As I have said, if a man is rational enough to know that what he does is contrary to the law and yet voluntarily does it, he must be held answerable to the law. The real criticism that is now directed against the rule is that although a man may know that what he is doing is wrong, he may be unable to help himself doing it. This is what used to be called irresistible impulse. It is a disorder not of the understanding, but of the emotions or of the will-power. That there are disorders of this sort, and that they ought to lead to mitigation of punishment seem to me to be beyond dispute. The question is whether they fall within the province of the jury or of the judge. If a case can be made out for saying that a man with such a disease is wholly incapable of preventing himself from committing the crime, and thus wholly irresponsible, it is prima facie a proper matter for the jury. The Royal Commission has come to the conclusion that medical opinion is now sufficiently certain to be able to say that there may be such cases. But the Commission finds itself—not unnaturally when one considers the great difficulty of the subject-matter—divided upon the terms of the definition which should draw the line. The majority favours the view that the jury should simply be asked the broad question whether the prisoner was responsible for his act or not. At first sight this seems an attractive way out. It gets to the heart of the matter and so long as the jury are directed that they are concerned only with *total* irresponsibility they will in theory arrive at a just verdict. But a question in this form is a novelty in trial by jury. The procedure under which a jury hears and determines a matter is not designed for answering general questions of this sort involving a wide area of debate, but for dealing with specific points of fact on which they are charged. If a general question is to be left to them, why restrict it to sanity or insanity? Why not ask them in a general way whether the accused was responsible at all? Under our system the prosecution must allege and prove a definite crime. No one would suggest that the jury should be left with a general question whether the law has been broken or whether the prisoner should be punished or not. I believe that a general question on insanity would be just as objectionable. I think there is great force in the observation of the minority of the Commission on this point at p. 286 where they say: "It is the traditional duty of our criminal law to lay down by definition, as clearly as possible, the essential elements of liability to conviction and punishment."

The alternative view put forward by the Commission is that there should be added to the McNaghten Rules, as they at present exist, a third ground, namely, that the prisoner was incapable of preventing himself from committing the act. This formula the majority regard as an alternative only and the report is scrupulous in pointing out its disadvantages. It points out in para. 314 that to be of any value the addition must not be limited to the idea of irresistible impulse. There are diseases such as melancholia, for example, in which the patient experiences not an impulse but a change of mood. He may believe that such misery awaits both him and his family, that death for all is a less dreadful alternative; in such circumstances the criminal act may be coolly and carefully prepared, but still be the act of a madman. The formula would therefore have to be interpreted, the Report says in para. 319, "as meaning not merely that the accused was incapable of preventing himself if he had tried to do so, but that he was incapable of wishing or of trying to prevent himself, or incapable of realising or attending to considerations which might have prevented him if he had been capable of realising or attending to them." This seems a lot to read into the formula, and as the report says, if it is to be interpreted so widely, is it not tantamount to inquiring from the jury whether the accused was so insane that he ought not to be regarded as responsible and thus leaving them in the end with the general question?

Amendment of the McNaghten Rules

I think that this is a problem that ought to be solved empirically rather than theoretically. If the door is opened, a multitude will try to enter through it. Many will be cases in which men and women, abnormal, but not in any ordinary sense mad, have failed to exercise proper control over their emotions. There will be many cases of gross mental abnormality where nevertheless it cannot be said that the prisoner was wholly irresponsible. There will be some cases—and I suspect they will be in a small minority—where the disease made the accused wholly irresponsible. If a sharp dividing line could be drawn between complete and partial irresponsibility, it would be right both in theory and practice that the question should be submitted to the jury. But it does not appear at present that a sharp line can be drawn, and unless it can, it is not truly a jury question. Medical science has advanced far enough to say that there ought to be an addition to the McNaghten Rules, but not, I think, to formulate a satisfactory one. There must have been a period I suppose—I am not a legal historian—when the law fumbled over *mens rea*, and when conceptions of deliberate intent and recklessness and foreseeable consequences had not been worked out with sufficient detail to give the juryman of the day something he could grasp: no doubt, the new concept was introduced gradually. The wider notion of emotional irresponsibility is still, I think, as novel as *mens rea* was six or seven hundred years ago. I am not myself satisfied that it is yet sufficiently clarified to be delivered over to the deliberation of a jury. If this meant that prisoners who suffered from emotional disorders, must either be acquitted or hanged, there would be an urgency about it, which could not wait for careful formulation. But that is not the question. The question is simply whether the time is ripe to take the matter out of the province of sentence and let it follow *mens rea* into the control of the jury. It is a question of great theoretical interest and importance to lawyers, but not one which I should have supposed need stir the conscience of the plain citizen. Nowadays no mentally abnormal person is hanged and the only question is whether he goes to Broadmoor by way of the verdict of the jury or by way of a reprieve by the Home Secretary. The destination is the same; only the route is different. It has always surprised me that people who are not lawyers should concern themselves so ardently about the form, whether it should be by verdict or reprieve, while lawyers who ought to concern themselves with forms remain comparatively indifferent.

There is no doubt that the McNaghten Rules as they stand are very narrow—so narrow that if the test is strictly applied, it should be extremely difficult to secure an acquittal. If the prisoner's state of mind was really such that he did not know that his killing was contrary to the law, and he can satisfy a jury of that, he is likely to be so mad as to be unfit to plead. Nevertheless I think that the McNaghten Rules remain in 1954 as good a test of total irresponsibility as they were in 1843; what gives them the appearance of obsolescence is not any defect in themselves but the fact that in the changed conditions of 1954 persons who are totally irresponsible are rarely at large, and if at large, are rarely put on trial: persons with diminished responsibility are frequently put on trial, and when they are convicted and sentenced to death, it is erroneously supposed that the McNaghten Rules have failed in their purpose. I have already discussed the factors that conduce to this popular error. The most important of them is the automatic death sentence. In *English Law and the Moral Law*, 1953, p. 88, Professor Goodhart says: "Today these two entirely different questions concerning guilt and responsibility tend to be dealt with as if they constituted a single one, with the result that confusion is introduced . . . I believe that this confusion will continue until the law ceases to provide that anyone convicted of murder must be sentenced to be hanged. The much criticised McNaghten Rules, when applied to murder cases, seem to many people to be unreasonable, because they justifiably feel that it is morally wrong to hang a man who has acted under an irresistible impulse. This unreasonableness disappears to a great extent in practice, because in such a case the Home Secretary may recommend a reprieve, but no jury is ever certain that this will happen. In other words, it is the death sentence, and not the McNaghten Rules, which brings the law of insanity in murder cases into conflict with the moral law in many instances. . . . If the death penalty were abolished the various problems relating to legal insanity would, in large part, disappear also, just as they have in the case of other crimes. In saying this I am not arguing that it may not be necessary for other reasons to retain the death penalty, although I am not convinced that it is, but it is important that we should realise that part of the price we pay for the death penalty is inevitable confusion in the law relating to the legal responsibility of those who have a disease of the mind." I did not read these words until after I had formulated my own conclusion on the point. Professor Goodhart's conclusion will anyway carry much more weight than mine. But still it would not be quite fair if I represented my own thoughts as having even the value of independent corroborative testimony. I have the great privilege of having been Professor Goodhart's pupil, so it may well be a case of "like master, like man."

The popular error is promulgated by the fact that in so many cases of diminished responsibility an attempt is naturally made to persuade the jury to find insanity within the McNaghten Rules. Even if the attempt offers little hope of success it makes an opportunity for the defence to get on record the evidence they have about the prisoner's abnormality and thus ensure that it will come to the attention of the Home Secretary. The law affords only this indirect access to the tribunal which really decides the issue. Anyhow, where the formal sentence is death and where counsel cannot be heard before the tribunal which passes the real sentence, no defence counsel can do other than exert every legitimate effort to obtain a favourable finding from the jury. But it is bad for the law that juries should constantly be put under pressure to give effect to what are really pleas of diminished responsibility, which upon the true division of functions between judge and jury should relate to sentence and not to guilt.

Punishment and Treatment since 1948

By T. E. James, M.A., B.C.L., *Barrister-at-Law*

The work of the Court of Criminal Appeal during its first forty-odd years, that is up to the year 1948, and its contribution to criminal jurisprudence was carefully considered in an address to the Society of Public Teachers of Law by Professor Seaborne Davies in the autumn of 1951. This was followed a year later by an address to the same society by Lord Goddard C.J. Since 1948, the Criminal Justice Act of that year and the Prison Act, 1952, which partially repealed and re-enacted the 1948 Act with minor amendments, have come into force. In the field of penology this legislation has had a profound effect, and it is proposed in this and following articles to consider the influence of the Court of Criminal Appeal in its application. Moreover, the time is appropriate since the first spate of cases on these new Acts has started to subside. Penology is here taken to mean the body of knowledge regarding the treatment of criminals, which is the definition given by E. H. Sutherland in *Principles of Criminology* (Chicago, 1947). The word " treatment " is perhaps more appropriate than " punishment," having regard to the present tendency to underplay the retribution theory and to emphasise the reformative, deterrent and preventive aspect. The aim of probation with its varied conditions, the introduction of attendance centres and the conditional discharge are sufficient evidence of this trend, apart from the general tenor of the recent legislation and the policy of the Prison Commissioners.

At the outset it may be said, with respect, that the influence of Lord Goddard C.J. can be observed throughout. The result of his judgments provides a learned historical background to most of the forms of punishment in use today, much of which cannot be found in the classical books on this subject, such as Pollock and Maitland, *History of English Law* (1923) Sir James Stephen, *History of the Criminal Law of England* (1883) and L. Radzinowicz, *A History of English Criminal Law* (1948).

The Court of Criminal Appeal stated the principles, which must guide a court in deciding what is the right sentence to pass on a prisoner, in the case of *R.* v. *Ball* (1951) 35 Cr.App. R. 164, *per* Hilbery J. at p. 165. "In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case."

In this article it is proposed to consider certain aspects of the fine and probation orders in the light of recent legislation and a number of judgments of the Court of Criminal Appeal.

The Fine

The fine system helps to keep offenders out of prison and thereby reduces the cost of criminal administration. Its advantage is that a fine does not interfere with the whole life of the offender. E. H. Sutherland has argued, with particular reference to so-called white collar crime, that the penal aspect of the fine has virtually disappeared as, for example, in the case of the wealthier offenders who can pay and remove themselves to some other neighbourhood (as above; and two articles: "White Collar Criminality," 1940; "Crime and Business," 1941). Lord Goddard C.J. deals incidentally with this aspect of the fine in *R.* v. *Markwick* (1953) 37 Cr.App.R. 125, where the Recorder had imposed a fine of £500 on a conviction for larceny from a fellow member of a golf club. He says at p. 126: "One has to take great care that there should be no suggestion that there is one law for the rich and one for the poor."

Section 13 of the Criminal Justice Act, 1948, is an innovation. Under this section any court has power to impose a fine on conviction on indictment for any felony the sentence for which is not fixed by law. Prior to this statute, on conviction on indictment for felony there was no power to impose a fine, except in the case of manslaughter and in some cases of felony where the magistrate could impose a fine on summary conviction, these latter cases being principally offences under the Larceny Act, 1861. The reason why a fine could be imposed in the case of manslaughter was the enormous variation in seriousness according to the circumstances in which this offence is committed. As the Lord Chief Justice commented in *R.* v. *Parry* (1950) 34 Cr.App.R. 224 at pp. 228–9 : "It may approach murder or it may be of the most technical description, and in the Offences against the Person Act, 1861, a provision was inserted that the felony of manslaughter could be punished by a fine."

Prior to the implementation of the 1948 Act, the court was generally left with restricted flexibility in sentencing a felon, who had an otherwise excellent record and who had committed a comparatively small offence. The alternatives then were : a sentence of imprisonment, which under such circumstances would be undesirable, or binding over, which was in effect inflicting no punishment.

Apparently, at the time when the change in the law effected by section 13 was first suggested, objection was taken that it would give persons of means an opportunity of buying themselves out of a prison sentence. In *R.* v. *Markwick* it was held that "heavy fines are appropriate only where Parliament has particularly provided for them, especially in some cases of fraudulent practices or offences under the Defence or similar regulations where the object of the prosecution is largely to prevent the offender from obtaining financial benefit for his breach of law." Accordingly, in this case a sentence of imprisonment for two months was substituted by the Court of Criminal Appeal for the fine.

Fines and other orders

It has been argued that a certain conflict arises between section 13 and the sections of the 1948 Act dealing with probation orders, in particular sections 3 (3) and 11 (2). It has been regarded as an established principle that a fine cannot be imposed together with the making of a probation order. Conditions essentially punitive in character, that are attached to probation orders, can only be harmful. Restitution is another matter (W. A. Elkin, *English Juvenile Courts*, Kegan Paul, 1938). Section 3 (3) of the 1948 Act retains this rule when empowering the court to make a probation order together with such requirements deemed necessary other than the payment of money by way of damages or compensation, except as provided in section 11 (2) of the Act. This latter subsection allows the court to order an offender put on probation to pay compensation for loss or damages for injury, though only to a limited extent if the order is made by a court of summary jurisdiction.

The case of *R.* v. *Parry* (1950) 34 Cr.App.R. 224 throws some light on this apparent conflict. The Recorder had made a probation order and imposed a fine of £25 when sentencing each of three men for warehouse-breaking and larceny. The Court of Criminal Appeal (Lord Goddard C.J. giving the judgment) decided that the Recorder's sentence must be varied since, if section 13 of the Act were read as applying to the sections of the Act relating to probation, the effect would be contradictory. Such, it was held, was not necessary for the true construction of section 13, and the apparent exception to the principle established by section 3 (3) did not amount in fact to permitting a fine together with the making of a probation order. Further, it was pointed out that compensation or damages ordered under section 11 (2) only gave rise to a civil debt and was not a condition of a probation order; it could not be ordered by way of punishment, no provision being made for inflicting a sentence of imprisonment on default.

R. v. *Parry* related to the making of a probation order together with a fine for the same offence; in *R.* v. *McClelland* (1951) 35 Cr.App.R. 22, it was held that a court could not make an order of conditional discharge under section 7 (1) of the 1948 Act and at the same time impose a fine. Section 11 (2), already referred to in connection with probation orders, is likewise applicable to orders of conditional discharge, that is damages or compensation recoverable as a civil debt may be awarded. It was pointed out by Lord Goddard C.J. that a fine is a punishment and the exercise of the power given to the court by section 7 (1) to make an order of conditional discharge is expressly limited to cases when it is inexpedient to inflict a punishment.

The introduction of fines for felonies by section 13 of the Act raises a further point. On a court of assize or quarter sessions imposing a fine, whether for a felony or misdemeanour, section 14 provides in effect that one of the following orders "may be made": allowing time for payment, ordering payment by instalments or simply directing so many months' imprisonment if the fine is not paid, neither time nor instalments being mentioned. In the latter case the prison sentence would commence to run forthwith but the prisoner could obtain his discharge at any time by paying the fine or by paying part of the fine, the term being proportionately reduced (section 15 (5) of the Criminal Justice Act, 1948). When allowing time or directing payment by instalments, a sentence of imprisonment may be imposed in the event of the fine not being duly paid. As a result, in *R.* v. *Brook* (1949) 33 Cr.App.R. 92, it was held that the imposition of a fine, together with an order that the offender was to remain in custody not for a fixed period but till it was paid, was an order that could no longer be made. Lord Goddard C.J., who gave the judgment of the court, held that despite the permissive nature of section 14, namely, that the court may make one of the orders referred to, the section laid down a new procedure, since it was inconsistent with the law that existed prior to the 1948 Act in relation to the payment or recovery of fines. Under the previous law, fines might be imposed by a court of assize or quarter sessions for misdemeanours and then the prisoner would have to pay if he could. If he could not he was in the position of a debtor of the Crown and would then have to petition the Crown to let him out of prison and to forgo the penalty.

Probation

Probation developed from the suspension of punishment, subject to good behaviour, into the present conception of it as a combination of the conditional suspension of punishment and the personal supervision of the released offender during a trial period. The interesting legal history of this development in various countries is very well recorded in the book *Probation and Related Measures*, published by the Department of Social Affairs of the United Nations (New York, 1951).

Probation is a striking example of the modern trend in penology away from the punitive and repressive approach, namely, general deterrence and retribution, towards would-be humanitarianism and utilitarianism, that is, attempts to improve social conditions and to develop effective social services. Unwise use of probation may cause it to develop into a sterile form of criminal treatment; its wise use may result in a most valuable method of rehabilitation. For success, however, everything depends on the relationship between the offender and the probation officer. In considering statutes and cases relating to probation and in evaluating them, this vital relationship must never be lost sight of. This essential to success has resulted in this form of treatment being greatly influenced by persons professing some other than the legal discipline, especially the psychologist. An important handbook for probation officers, *Probation and Re-education*, by Elizabeth Glover (Kegan Paul, 1949), states: " The great contribution which psychology has made from the point of view of probation is that it has led us away from the purely legal or moral approach to delinquency to the scientific or curative one."

In matrimonial causes, the close relationship between the probation officer and the disputants has been recognised by the Court of Appeal. Communications to a probation officer, when the husband and wife jointly or separately approach him with a view to reconciliation and when litigation is imminent, are " without prejudice " to the rights of the parties. The husband and wife may, of course, waive the privilege attaching to such communications. (*McTaggart* v. *McTaggart* [1949] P. 94; *Mole* v. *Mole* [1951] P. 21, doubting Ormerod J. in *Bostock* v. *Bostock* [1950] P. 154.) The effect of the phrase " without prejudice " in criminal proceedings is doubtful (see G. D. Nokes, *An Introduction to Evidence*, Sweet & Maxwell, 1952). In the course of the probation officer's duty, however, additional offences must inevitably become known. The court might hold that the privilege does not attach to such communications; but as yet no case involving this issue has come before the courts.

The form of the order

A matter, which Lord Goddard C.J. hoped would receive the widest publicity, related to the form of the probation order used by courts of summary jurisdiction and in courts of quarter sessions and of assize (see (1951) 35 Cr.App.R. 207). The court has power to make a probation order with a wide discretion as to the conditions that may be imposed (section 3 (3) of the Criminal Justice Act, 1948) and the effect of the order must be explained to the offender in ordinary language (section 3 (5)). A court that merely states in sentencing that a probation order will be made does not thereby automatically impose any conditions. Apparently, there was a certain misapprehension in this respect occasioned by the mention of three conditions, including one that the probationer will lead an honest and industrious life, in a specimen form of probation order (No. 66) set out in the Schedule to the Summary Jurisdiction Rules, 1949 (S.I. 1949, No. 1405), which has now been replaced by the Magistrates' Courts (Forms) Rules, 1952 (S.I. 1952, No. 2191), Form 57.

Breach of an order

The commission of a further offence or failure to comply with the requirements of a probation order renders the probationer liable to be sentenced for the original offence (section 3 (5) of the 1948 Act), the procedure to be followed in such an event being laid down in section 8 of the Act. The common condition referred to above " that the probationer shall lead an honest and industrious life," was, as Lord Goddard emphasised ((1951) 35 Cr.App.R., above, at p. 209) of a very vague and uncertain nature. If it meant that the probationer was not to commit another offence, that is dealt with by the Act; if it meant something less, then any untoward act might be construed as a breach of the order. The learned Lord Chief Justice recommended that the more precise condition, that the probationer should be of good behaviour and keep the peace, should be substituted. This condition is itself wide enough but it would allow the probation officer latitude in exercising his discretion as well as placing some limits on conduct that is not to be indulged. The corresponding condition in Form 57 of the Rules of 1952 is that the probationer " shall be of good behaviour and lead an industrious life."

In a case where a probationer has subsequently committed another offence and in being sentenced therefor the breach of probation is taken into consideration, the court should deal specifically with this breach and a separate sentence should be passed. (*R.* v. *Webb* (1953) 37 Cr.App.R. 82.) This would seem necessary only if the original offence were indictable; it would then rank as a conviction for the purposes of subsequently imposing corrective training or preventive detention. This is so since, under section 12 of the Act, a conviction resulting in the making of a probation order does not rank as a conviction unless, subject to certain exceptions, a sentence is imposed for failure to comply with the requirements of a probation order (section 6) or after a further offence has been committed (section 8). In *R.* v. *Webb* the Lord Chief Justice pointed out that "the practice of taking other offences into account, however beneficial or advantageous to an offender, is based merely on convention and has no statutory foundation." This observation is applicable not only to probation orders but also to conditional discharges (sections 7 and 8 of the Criminal Justice Act, 1948).

The continued citation of the principle "that justice should not only be done but should be seen to be done" in cases to which it is inapplicable may lead to the impression that it is more important that justice should appear to be done than that it should be in fact done: per SLADE J.

When is a Pig "Cattle"?

By J. F. Garner, LL.M.
Clerk of the Peace, Borough of Andover

The writer has recently had occasion in the course of practice to frame an indictment for the stealing of a pig. Naturally one turns first to section 2 of the Larceny Act, 1916, "simple larceny," but this offence cannot be charged in respect of any incident of stealing for which some special punishment is provided under the 1916 or any other Act. Section 3 deals with the stealing of a "horse, cattle or sheep." The question then arises whether a pig is "cattle" within the meaning of this section, or whether it is outside the section, in which event the charge should be laid under section 2. There is no definition of "cattle" in the Larceny Act itself, nor does the Interpretation Act, 1889 [1] assist, and we propose therefore to consider first judicial decisions on the meaning of cattle in other statutes,[2] then dictionary meanings, and finally endeavour to come to a conclusion.

The cases

Section 40 of the Malicious Damage Act, 1861, makes the killing, etc., of any "cattle" a felony, and a separate offence is created by section 41, *ibid.*, in respect of the killing, etc., of any "dog, bird, beast or other animal, not being cattle." On a construction of the predecessor of the present section, which is perhaps most nearly *in pari materia* with section 3 of the Larceny Act, 1916, the court held that "a pig is cattle within the meaning of the Act": *R.* v. *Chapple* (1804) Russ. & Ry. 77. Again, in section 68 of the Railways Clauses Consolidation Act, 1845, the word "cattle," used without accompanying words, was held to be "sufficiently comprehensive to include pigs": *Child* v. *Hearn* (1874) L.R. 9 Exch. 176, at p. 181.[3] In the Income Tax Acts again, it has been held that "cattle" does include "pigs": see *Phillips* (*Inspector of Taxes*) v. *Bourne* [1947] 1 All E.R. 374, where Atkinson J. also said: "I have had a number of cases cited to me in which the word 'cattle' had to be construed, and in every one of them the narrow meaning was rejected and the wider meaning was adopted. I agree that they were all decisions on a particular Act, but they do establish that, in interpreting the word 'cattle' in an Act, one has to look at what is the evil aimed at—what it is that the section wishes to deal with. If one finds that the word 'cattle' must have been used in the wider sense, one must give effect to it."

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[1] Except that the plural word "cattle" includes the singular: Act of 1889, s. 1 (1) (*b*).

[2] There seems to be no decided case on the meaning of "cattle" in the present context.

[3] This case is relied on by Stone's *Justices Manual*, as definite authority for the proposition that "cattle" includes pigs in s. 3 of the Larceny Act, 1916. *Sed quære*?

The Dictionary

This leads one naturally to the dictionary meanings, which show clearly the narrow and wider meanings referred to by Atkinson J. in the above passage. Thus, the shorter Oxford Dictionary says that "cattle" is "a collective name for the bovine genus, but formerly and still locally, for live animals held as property or reared to serve as food or for their milk, skin, wool, etc.," and Webster similarly says that "cattle" means "collectively live animals held as property or raised for some use, now usually confined to quadrupeds of the bovine family." On the other hand, when the Dogs Act, 1906, was intended to apply to a wide variety of animals, it was considered necessary to provide expressly that "cattle" should include "horses, mules, asses, sheep, goats and swine," and in the Public Health (Meat) Regulations, 1924 (S.I. No. 1432), the special definition of meat provides that that term shall mean the flesh of "cattle, swine, sheep or goats. . . ."

The answer

In section 3 of the Larceny Act, 1916, is "cattle" to be given the wider meaning or the narrow meaning, so as to include or exclude pigs? Each of the other terms appearing in the section "horse" (*R.* v. *Aldridge* (1849) 4 Cox C.C. 143), and "sheep" (*R.* v. *M'Culley* (1838) 2 Mood.C.C. 34) are to be understood as generic terms—if "cattle" also is to be a generic term, it presumably will apply only to the bovine genus, and so exclude pigs. Case law, however, seems to be against that interpretation, and the courts might follow *R.* v. *Chapple* (*supra*). The wider of the two dictionary meanings is certainly the older one, and may not be universally in current everyday use, but we are dealing here with a statutory provision of some age, historically, and the cases giving a generic meaning to "horse" and "sheep," were decided when these classes of animals had the honour of being protected each by their own peculiar statutory provision. Incidentally, it is quite clear that the animal which is the subject of the charge must be alive when stolen; the stealing of a dead pig would certainly come within section 2 of the Act (*R.* v. *Williams* (1825) 1 Mood. C.C. 107).

On the other hand if "cattle" is to be read as including pigs in section 3, there is no logical reason why it should not also include sheep. This reasoning was followed in the case referred to at the commencement of this note, and the learned Recorder, after some argument, quashed the count framed on section 3 and upheld an alternative count framed on section 2.

A Day in a Police Court

By A. E. Jones
Magistrates' Clerk

The series of which this is the ninth instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Grievous Bodily Harm

A fight

"This is a day charge, your worship; not yet entered in your register," said Mure, the assistant-gaoler, as he led Alfred Downes into the dock. He handed a charge sheet to Frell, the clerk, who said: "The defendant is charged, sir, with causing grievous bodily harm with intent to cause it."

Alfred Downes, known to his acquaintances as "Cosher," was so much at home in the dock that he even sat down unbidden. He was a bald, heavy-featured man with the scar of an old razor slash on his cheek. He had immensely broad shoulders on a stocky frame, and wore a flashily cut suit with a clean white shirt and collar but no tie. Usually the results of settling differences in his circle were not referred to the police, but this time things had gone a little too far and a man was in hospital with a fractured skull. The prisoner had realised the seriousness of his position, and Mr. Tarkaway, whose place of work was almost as much the court as his office near it, rose in the solicitors' box and said: "I represent the accused, sir."

A detective inspector stepped into the witness-box and said: "I'm asking for a remand in this case, your worship. The injured man is detained in hospital in a very serious condition."

"Are you objecting to bail?" inquired Mr. Sutterthwick, the magistrate.

"Yes, your worship."

"Then I shall want to hear some evidence."

The detective inspector took the oath, gave his name and rank, and proceeded: "At 6.10 this morning with another officer I went to 42, Bell Lane, and saw the defendant in a bedroom there. I said to him: 'I am a police officer and I have just seen Samuel Hart in hospital suffering from a fractured skull. He received that injury at about 12.5 a.m. outside a billiard club in Church Road, when he was hit violently on the head with some blunt instrument. From inquiries I have made I have reason to believe that you were responsible for his injuries and I shall arrest you on a charge of causing grievous bodily harm with intent.' I cautioned him and he said: 'What! Has he squealed?' I took him to the police station and on the way he said: 'There was a bit of a mix-up. I only acted in self-defence.' At the station he was formally charged and cautioned. In reply he said: 'I won't say anything until I have seen my solicitor.' He was searched and on him was found this cosh."

"Exhibit 1," murmured Frell without interrupting the writing of his deposition. Sergeant Quing tied a label to the weapon for the magistrate to initial, and the detective inspector continued: "It has what appear to be bloodstains on one end of it. Later, while I was taking the prisoner's finger-prints, he said, before I could remind him of the caution, 'He only got what he asked for.'" The witness stopped and Mr. Sutterthwick looked inquiringly at Mr. Tarkaway.

"With your permission, sir," said the latter, "I should like to reserve cross-examination at this stage." In view of this the clerk decided to reserve reading over the deposition.

Bail

Mr. Tarkaway continued: "I do most strongly apply for bail, sir. The defendant is in a position to offer very substantial security for his appearance."

"What is the police objection to bail?" asked the magistrate.

"For one thing, the injured man is very badly injured, your worship, and may not recover, in which case the prisoner would, of course, have to face a much more serious charge for which bail is not usually granted."

"I think I must deal with the facts and the charge as they are at present," remarked Mr. Sutterthwick. "The defendant could always be rearrested on a fresh charge."

"We also fear that our inquiries will be hampered if the defendant is allowed out on bail. There has already been an attempt to intimidate witnesses."

"I object to that, sir," broke in Mr. Tarkaway. "The defendant can't possibly be responsible for anything that may have happened in that way. He's been in custody since his arrest."

"It is close associates of the prisoner who have been responsible for the intimidation of witnesses," pursued the detective inspector. "Also I must point out to your worship that he is not a householder. He occupies a furnished room and is unmarried, so there is very little to hold him in this district."

"The inspector knows perfectly well," said Mr. Tarkaway, "that my client has lived in the neighbourhood for many years and has many ties, business and social, here. There is a gentleman in court who is willing to stand surety for his appearance in a very substantial sum. Mr. Downes wouldn't be likely to let him down. Moreover, he has not the slightest desire to abscond. He has a perfect answer to this charge."

"I don't think in all the circumstances," decided the magistrate, "that I should be justified in refusing bail. I shall require a surety in the sum of £500, or two sureties in £250 each. The remand will be for three weeks in view of the injured man's condition."

"Come forward, Mr. Fish," said Mr. Tarkaway, and a round-faced, round-bodied, perspiring little man came from the back of the court. He was sworn and the solicitor went through the routine interrogation. Yes, the surety was the proprietor of a billiards club and also a householder; yes, he was worth £500 after all his debts were paid; yes, he was willing to stand surety in that sum for the appearance of the defendant three weeks hence.

"Have the police any objection to this surety?" the magistrate asked.

The detective inspector knew a lot about Mr. Fish and his billiards club, but all he could say in reply to this question was: "We're satisfied he is worth the money, your worship."

Accompanied by his surety and a blonde woman in a fur coat Alfred Downes left the court. The detective inspector remained in the witness-box. "Your worship," he began, in a confidential tone, "the injured man in this case has been unconscious since his admission to hospital, but the doctors think there is a chance that he will come to later on today. If he does, it may only be for a short time. I wonder whether, in these circumstances, your worship would be available if the doctor considers he is fit to make a statement. It may be the only chance of taking a deposition from him."

Mr. Sutterthwick looked down to Frell and raised his eyebrows in inquiry. The clerk nodded.

"Yes, the clerk and I will make it our business to be available," Mr. Sutterthwick said, "but you'll have to send a police-car for us."

"Oh, certainly we'll do that, your worship. I hope you won't be troubled at an inconvenient time." And the detective inspector went off to conduct more interviews with reluctant witnesses before they were got at by Mr. Downes' supporters.

"That completes your morning's list, your worship," said Mure.

Interval for Refreshments

"Court's adjourned. Stand up, please," called Sergeant Quing loudly to the now nearly empty courtroom. Mr. Sutterthwick got up and bowed. The dregs of his audience rose raggedly to its feet and on his exit quickly disappeared. Food was in the mind of everyone and the smell of it was in the air. The staff of the court fed in relays, for the doors of the building did not close during the adjournment, and each office had to be kept manned to deal with those callers who found the lunch hour most convenient for transacting business with a police court. Clinter, the assistant clerk, and his assistants had much to attend to during the recess. There were forms to be drawn up in connection with the morning's cases, and witnesses to be seen regarding claims for expenses. At intervals the telephone rang, and all the time there was a trickle of men coming to pay money and women coming to collect it.

Sergeant Chumbleton, the gaoler, had callers too, but you could not obtain access to him, as you could to the General Office, by just pushing open a door. The door marked "Gaoler" was kept locked. When you knocked on it a sliding panel opened, and if you had come merely to pay an outstanding fine, you dealt only with the top half of Sergeant Chumbleton. But if you had business with a prisoner and were authorised to see him, the whole door would be opened and you would find yourself in a sort of outer security zone, confronted by a tall iron grille gate, unclimbable and unforceable. With a large key from a jingling bunch this would be unlocked and locked again behind you as you stepped into the stone corridor leading to the cells.

It was mainly police officers and connections of prisoners that the gaoler or his assistant conducted into this inner fastness. But the precautionary ceremonial had also to be gone through for certain messengers who carried trays. A man from the nearby eating house came each day with the sort of food which offered the best nutritive value for the sum which might officially be spent on destitute prisoners. But steaming, covered plates emitting more appetising smells were borne in from the neighbouring restaurant for prisoners who had money or friends with money. This business of feeding was not without its anxieties for Sergeant Chumbleton. He and Mure, his assistant, had to keep an eye on the contents of all the trays which went into the cells; there were the traditional files and ropes and saws to guard against, of course, but alcohol also was contraband. Defendants were not expected to reach prison in an exhilarated condition. On mere food, however, there was no restriction except means—and appetite. Julius Judges, the music teacher, just sentenced for indecent assault, found he had little stomach for food, but the three youthful shopbreakers cleared the plates of the substantial meal bought and sent in by their girl friends.

Prisoners were not the only customers the court brought to the local catering establishments. Prosecutors, witnesses, barristers, solicitors, spectators, together with defendants who were free again, all required food at mid-day; and some of them—especially those in the last category—felt the need for a drink as well. There was quite an outbreak of cafés and small restaurants near by, and the public-houses in the vicinity relied largely on the court for their mid-day trade. To avoid the possibility of embarrassing encounters, Mr. Sutterthwick, the magistrate, and Frell, the clerk, had their luncheons brought in from the "Court Restaurant"—which also sent in meals for the more opulent prisoners.

The clerk's luncheon was interrupted by only one telephone call today; it was from a barrister's clerk whose principal had been kept longer than he expected in another court and who, consequently, would still be on his way when his case was due to be called. Frell undertook to make counsel's excuses to the magistrate if necessary, but was able to give the somewhat cold comfort that as the case in question was near the end of the list it was unlikely to be called at the time the defendant was required to appear.

After lunch came the dictating of answers to the correspondence which the clerk had not had time to deal with before going into court in the morning.

The probation officer pleads

Meanwhile, the magistrate in his room was engaged in a verbal tussle. Miss Garrafrey, the probation officer, had come to see him on a mission which had two objects. She began on the more hopeful one first.

"I've seen Sylvia Wood, sir, the girl you fined £3 for indecency," she said. "Sylvia can't get the money for the fine today and she's given me an account of what made her do it which I think you should know. She's told me things which she didn't like to say in court to you. It seems that her husband has just come out of prison. He hasn't got a job yet and they were desperately hard up. So she went out to earn some money on the streets. I suspect actually that her husband sent her out to do it, but I can't get her to admit that. She's loyal to him although he's a shocking bad lot. The police have told me quite a lot about him and they think he's quite capable of living on her immoral earnings."

Mr. Sutterthwick did not find it incredible. "Well, Miss Garrafrey," he said, "even so, she's not bound to do it. She could inform the police and they'd prosecute the man. If she didn't like to go as far as that she could at least leave him. There's always National Assistance if she's destitute and can't get honest work."

"I know, sir. That's what she should do. But some of these people don't like that any more than they like the police. They have their standards of behaviour even if they're rather strange ones."

"My job is to enforce the standards laid down by the law."

"I know, sir. But I was hoping that in the special circumstances you might feel you could change your adjudication and put her on probation or, least, reduce the fine."

"No. The fine must stand, Miss Garrafrey. I don't want to give the impression that the court accepts that sort of conduct as a natural result of poverty. There are other, less shameful alternatives. I can't see any real excuse for it in this case even allowing for what you say."

"Well, will you give her time to pay, then, sir?" persisted Miss Garrafrey.

"Is she going to earn the money for the fine by the same methods?"

"No, sir. She's got a job to go to on Monday. And if she hadn't I could find her one."

"All right. I'll give her time to pay. And I'll put her under your supervision pending payment, too. That'll give you a chance to see what you can make of her. So you get what you want in another form, don't you, Miss Garrafrey?" and Mr. Sutterthwick smiled benignly.

The probation officer began again. "I've also seen Alice Brass, sir," she said. Mr. Sutterthwick looked blank. He found it difficult to keep in mind the names of the people who appeared before him.

"The woman charged with shop-lifting who's been remanded a week in custody," explained Miss Garrafrey.

"Oh yes, of course." The magistrate could remember the facts of the case perfectly, though the name escaped him. "You're not going to ask me to let her off, too, are you?" he asked.

"Not exactly, sir. In fact, you couldn't do it if you wanted to. She's already had her punishment, I'm afraid. That's what I wanted to tell you about. You see, when she was caught the first time her husband knew nothing about it. She was let out on her own bail after being charged, and next morning she just went along to the court after he'd gone to work, and as she was discharged absolutely she was back home with his dinner all ready for him by the time he returned from work. She managed to pay the costs out of her housekeeping money and he never found out about it. She was hoping to do the same this time. She didn't say anything about the charge to him when she got home from the police station; and he'd no idea that she was to appear at the court today. Now, of course, the police have had to send a message to him so that he can make arrangements about the child. And the fat's in the fire. He's not only shocked and disgusted with her but wild because he'll have to look after the home for the next week if she's kept in custody."

"Am I expected to remand her on bail for his sake?" inquired Mr. Sutterthwick.

"No, sir. But there's the child, too."

"Well, that's in the same position as if its mother had had to be taken to hospital suddenly. Somebody would be found to look after it then, and so there will now. It's very rough on the family, I know, but nobody would ever be punished if it had to be done without hurting anyone else."

"It may not be easy to make the necessary domestic arrangements in this case, sir. And it all does mean a most tremendous punishment for Mrs. Brass, apart from her week in custody. It's made her position with her husband very precarious. He's furious with her. I don't know really whether it won't mean the break up of her marriage."

" Her husband isn't entitled to leave her on account of this affair."

" No, sir. But he may do so, all the same."

" Then she can apply for a maintenance order against him."

" But she wants her husband, not just his money, sir. She's very fond of him."

" She should think of that before she goes shop-lifting. Anyway, I don't see that remanding her in custody now has anything to do with her relations with her husband. If he finishes with her because he's disgusted with her conduct it's not the remand but the fact of her conviction that will be the cause; and she can't get away from that."

" No, but it will embitter him still more against her if he has to manage things on his own for a week as a result of what she's done."

" That wouldn't necessarily be the result. He might feel sorry for her if she had to spend a week in prison. He might miss her so much that he'd decide he couldn't possibly do without her, whatever her faults. There just isn't any certainty about the effects of a week inside on her matrimonial relationship. What is pretty certain is that it'll have the effect of making her less inclined to shop-lift in future."

" I'm sure she's learned her lesson about that already, sir."

" She didn't after the last time. How do I know that if she gets away with it this time and her husband gets over his annoyance she won't feel she can always rely on her domestic position to pull her out of trouble. She may start again then. Leniency didn't reform her before."

" She wasn't put on probation last time, sir."

" But, Miss Garrafrey, does she need to be told by a probation officer that it's wrong to steal? Have you got to start giving elementary moral instruction of that sort to a young married woman with a child? There's no unusual financial pressure on her to cause her to steal. She doesn't need a probation officer's help in that direction—to get her into economic stability. And however much you supervise her you can't always be with her to see that she never succumbs to temptation in a shop. My way is to show her that it's unprofitable to do so."

" That would be my way, too, sir," said Miss Garrafrey gently, and Mr. Sutterthwick laughed his appreciation of the rejoinder.

" Anyway, that's not the only thing I've got to consider," he said. " You know how prevalent shop-lifting is just now.

It's part of my job to do something about it, and I don't regard it as just an uncontrollable tic. If every shop-lifter were caught each time she pinched something, no woman would do it. But there aren't enough detectives in the world to make that state of things possible. We've got to rely on something else. And I believe that if potential shop-lifters get it into their heads that they will be sent to prison each time they are caught, it won't be such a popular pastime with respectable ladies. This case may get in the local papers as it is a remand in custody, and that sort of thing gets around. Her week inside may help to deter others as well as herself."

"Well, sir," said Miss Garrafrey, obstinately, "I still firmly believe that this woman would never steal anything again, even if you did let her out on bail for the week. And it isn't certain that anybody else will be deterred by this example made of her."

"No. Nothing's certain," agreed the magistrate. "Not even Mrs. Brass's future honesty. But you've said all you can say for her. I'm sorry I can't give you your way in this case, but thank you for coming and telling me about it. Now would you mind asking Mr. Thorburton to come and see me about that young fellow I had to give two months to this morning? He's got one young child already and his wife's expecting another. She fainted in court after he was sentenced. We'll help the family from the Poor Box if they need it. I want Mr. Thorburton to go round to the home and investigate."

On her way to her colleague's room Miss Garrafrey passed Preskedge, the first assistant in the General Office He carried a pile of summonses, warrants and orders for the clerk to check and the magistrate to sign. It was an indication that two o'clock was approaching. P.C. Knebble, the assistant warrant officer, was rounding up defendants who were appearing to the afternoon's summonses, and his "skipper" was putting the letters from the absentees on the clerk's table in court. Inspector Campting was making sure that all police witnesses were present. Finally, "O.K. Sarge," Quing was told. He conveyed this information in suitable language to the magistrate and clerk and then, preceding them into the courtroom, he called loudly for the second time that day, "Silence. Stand up, please."

The principal actor made his bow and the curtain was up on the second house.

Practice and Procedure

Quarter Sessions

Appeals from Local Authorities under the Public Health Acts Amendment Acts

So few appeals now come to quarter sessions except those from decisions of magistrates' courts that when one does the practitioner is apt to be caught napping.

A case in point is an appeal under section 7 of either of the Public Health Acts Amendment Acts of 1890 and 1907, which, under certain circumstances, allow a person aggrieved by an act or refusal of a local authority to appeal therefrom to quarter sessions. In both cases, the appeal is to be made "in manner provided by the Summary Jurisdiction Acts."

Among the problems which arise are the following:—

(a) *In a county, is the appeal to be heard by the full court of quarter sessions or by the appeal committee?* On page 164 of Willway's *Quarter Sessions Practice* it is stated that such an appeal is heard by the full court, but on further reflection the author has doubts. Section 9 (1) of the Summary Jurisdiction (Appeals) Act, 1933, provides that in counties "every appeal . . . to a court of . . . quarter sessions against a . . . decision of a court of summary jurisdiction" shall be heard by a court composed of members of the appeal committee. On its face this does not apply to an appeal against a decision of a local authority and the question is whether the requirement that such appeals are to be brought "in manner provided by the Summary Jurisdiction Acts" extends to the composition of the appeal tribunal or is limited to the procedure before the tribunal. In 1890 and in 1907, of course, there was no appeal committee and the tribunal was not in question.

The Public Health Acts Amendment Acts do not say that appeals under them are to be deemed to be appeals under the Summary Jurisdiction Acts and this is an argument for the view taken in the *Quarter Sessions Practice*. On the other hand, the exceptional provision made by section 9 (2) of the Summary Jurisdiction (Appeals) Act, 1933, for appeals under the Lunacy Act, 1890, and the Poor Law Act, 1930, whereby the summary jurisdiction procedure is not to be followed *except* as to the composition of the appeal tribunal, is an argument that the 1933 Act applies *in toto* to all appeals to county quarter sessions which are to be made in manner provided by the Summary Jurisdiction Acts unless the contrary intention is expressed.

The point is not free from doubt and unless it is desired to take it to the Divisional Court the safest course seems to be to hear the appeal during a sitting of the full court of quarter sessions but to take care that only members of the appeal committee sit for the purpose and that not less than three of them are on the Bench.

(b) *Is a recognisance to prosecute such an appeal with diligence still required?* Section 36 (7) of the Criminal Justice Act, 1948, abolished such a recognisance in an appeal "from a decision of a court of summary jurisdiction," and it might be argued that the repeal is limited to such. But there never was any requirement for a recognisance on appeals under the Public Health Acts Amendment Acts apart from the provision that such appeals were to be made "in manner provided by the Summary Jurisdiction Acts" and as it is no longer required for them it can no longer be required for appeals to be conducted in like manner.

(c) *What steps must now be taken on abandoning such an appeal?* Section 85 of the Magistrates' Courts Act, 1952, details the procedure to be followed when an appeal from a court of summary jurisdiction is abandoned. It involves giving notice to the clerk of the court concerned but this is wholly inapplicable in an appeal from a local authority. Further, the purpose of section 85 is to enable the original decision of the summary court to be enforced and for that court to deal with costs incurred in respect of the appeal before it was abandoned. Section 85 can therefore have no application to an appeal under the Public Health Acts Amendment Acts and we are thrown back on the general powers of quarter sessions as to costs under section 5 of the Quarter Sessions (Baines') Act, 1849. If on the day appointed for the hearing the appeal is not prosecuted, quarter sessions may award such costs as to them seem reasonable on dismissing the appeal. These costs can be recovered summarily under section 5 (2) of the Summary Jurisdiction (Appeals) Act, 1933. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Magistrates' Courts

Summary Trial of Minor Offences

Home Office Circular No. 149/1954 dated July, 28, 1954.

I am directed by the Secretary of State to refer to the Home Office Circular No. 66/1954 (see [1954] Crim.L.R. 292) about the summary trial of minor offences, and to say that it has been represented to him that it would be of advantage if the form of notice suggested in the appendix to that circular contained an indication that it should not be completed without legal advice if the person concerned proposes to be legally represented at the hearing. The Secretary of State agrees that this would be desirable and he would accordingly suggest that a footnote should be added to the notice in the following terms:—

> "If you intend to appear by solicitor or counsel you would be well advised not to complete this form without consulting your solicitor,"

or words to the like effect.

Proceedings under the Revoked Aliens Order, 1920

The Aliens Order, 1920, was revoked and replaced by the Aliens Order, 1953, as from April 1, 1954, but the new Order contained the usual clause applying the Interpretation Act, 1889, to the revocation. The effect of section 38 of that Act, as applied, is to preserve the possibility of proceedings being brought in respect of offences committed against the revoked Order (see *Wicks* v. *Director of Public Prosecutions* [1947] A.C. 362). Accordingly, charges under the Aliens Order, 1920, are still occasionally met with in magistrates' courts—for instance, where a failure to give some prescribed information occurred before the new Order came into force. Article 18 (10) of the 1920 Order made such defaults continuing offences and so long as the Order remained in force no difficulty of a time limit stood in the way of prosecutions. But this Article, like all the rest, ceased to have effect on the repeal of the Order and so offences committed against it cannot in any circumstances be deemed to have continued beyond March 31,

1954. The result is that any prosecution for an outstanding offence under the Aliens Order, 1920, must be commenced before October 1, 1954. From that date onwards the ordinary summary jurisdiction time limit on the bringing of proceedings will bar such cases.

A little ingenuity on the part of prosecuting authorities will probably secure that any alien offender is brought to book however long after the commission of his offence it comes to light. Transitional provisions in the Aliens Order, 1953, give effect to registrations of aliens under the 1920 Order as if they had taken place under the new Order; consequently most defaults in giving information required will, whenever they took place, constitute the offence under the 1953 Order of failing to supply particulars necessary to maintain the accuracy of the aliens register (a continuing offence as in the old Order). [A. E. Jones.]

Case and Comment

[Reports of cases included here are prepared by C. J. ELLIS, *Barrister-at-Law*, unless otherwise appears]

Accessory—*Accessory before the fact—aiding and abetting—person not present when offence committed.*

POPE *v.* MINTON [1] (Q.B., Divisional Court : Lord Goddard C.J., Cassels and Slade JJ. : July 26, 1954).

M. was charged that he did aid, abet, counsel and procure L. to drive a motor-vehicle on a road, L. being a person disqualified from driving. The justices found the following facts:—At about 11.30 p.m. on January 9, 1954, M. and L. were staying at a house together. M.'s car was outside the house with its ignition key in the ignition switch. L. asked M. to lend him the car to visit a friend and M. said "You can go if you want to" and retired to bed. He knew that L. had been disqualified from driving. M. was not present while L. was committing the offence. It was contended on M.'s behalf that he was not guilty of the offence charged as he was not present when the principal offence was committed; all he had done was to permit L. to drive the car without a policy of insurance, to which offence M. had already pleaded Guilty. The justices were of the opinion that his contentions were right and dismissed the information. The prosecutor appealed :—

Held, allowing the appeal, that on the admitted facts of the case, M. was an accessory before the fact, because it was his action in allowing L. to take the car away which enabled L. to commit the offence. The words aid, abet, counsel and procure were a term of art to describe what was commonly called an accessory before the fact. Had it been necessary to decide whether M. was present while the offence was being committed, there would have been little difficulty in deciding that he was constructively present.

COMMENTARY. Lord Goddard referred to the decision in *Carter Patersons and Pickfords Carriers* v. *Wessel* [1947] K.B. 849, and particularly to his own words at p. 852 concerning accessories. By virtue of section 5 of the Summary Jurisdiction Act, 1848 (now section 35 of the Magistrates' Courts Act, 1952), a person is equally liable with the principal offender to conviction and penalty, whether he is technically an accessory before the fact or an aider and abettor. Lord Goddard considered that this principle was applicable in the present case.

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[1] For the appellant: *Sebag Shaw* (instructed by Sharpe, Pritchard & Co.). For the respondent: *Basil Wigoder* (instructed by Humphrey Razzall & Co.).

See Archbold, 33rd ed., 1494, 1500; Glanville Williams, *Criminal Law*, The General Part, § 57; Stone, 86th ed., 69.

Ancient Monuments—*Damage—liability for damage when due care taken.*

R. *v.* NOBLE; R. *v.* KING [2] (Salisbury Magistrates' Court: July 7, 1954).

N. and K. were charged under section 14 (1) of the Ancient Monuments Consolidation and Amendment Act, 1913, with damaging a group of barrows on Normanton Down, near Stonehenge, a monument to which section 14 had been applied by Order in Council. The damage had been caused by ploughing six barrows which formed part of a Bronze Age burial ground. The large barrows in the group were undamaged. K., an estate agent, had acted for the present owner in the recent purchase of the land. The owner wished to cultivate the land and had instructed K. to find out the position of any ancient monuments on it. N., the farm manager, was informed of the result of these inquiries, and he pointed out to the ploughman on the spot the barrows to be avoided. The Crown contended that the section imposed an absolute liability if damage were done and that the exercise of care to prevent damage was no defence. The defence, while accepting N.'s responsibility for the acts of the ploughman, submitted that there was no case to answer for either defendant because:—(1) K. had only acted in the purchase of the land and made inquiries in order to safeguard the barrows; he was in no way concerned with the actual farming operations; (2) N. had taken great care to prevent damage by instructing the ploughman on the site; (3) the Ministry of Works inspector had given evidence that no serious archaeological damage had been done and that there would be no official objection to the ploughing of one of the damaged barrows if a small plough, set for a depth of 3 inches less than the one used, were employed; (4) the barrows were very low and covered with long grass and nettles; it had been admitted by a witness for the Crown that, although the barrows were distinguishable afterwards on aerial photographs, they could not have been seen at the time from the ground.

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[2] For the Crown: *D. Prys Jones* (instructed by the Director of Public Prosecutions). For the defendants: *S. Cope Morgan Q.C.*, *John R. Pickering* (instructed by William Charles Crocker).

Held, dismissing both summonses, that there was no case to answer. [Reported by John R. Pickering, *Barrister-at-Law.*]

COMMENTARY. Ancient Monuments Consolidation and Amendment Act, 1913, s. 14 (1), provides: "If any person injures or defaces any monument . . . to which this section applies by virtue of an Order in Council . . . that person shall on summary conviction be liable either to a fine not exceeding £5, and . . . to pay such sums as the court . . . think just for the purpose of repairing any damages caused by him, or to imprisonment for a term not exceeding one month."

Appeal—*Privy Council—competence of court—no appeal to Supreme Court of colony.*

KENYATTA *v.* R.[3] (Judicial Committee of the Privy Council: Lords Goddard C.J., Morton of Henryton, Cohen and Keith of Avonholm: July 7, 1954) ([1954] 1 W.L.R. 1053).

K. and others petitioned for special leave to appeal from a decision of the Supreme Court of Kenya which affirmed convictions and sentences passed on them by a magistrate. The magistrate had found K. guilty of managing an unlawful society known as Mau Mau and the other petitioners guilty of assisting in the management. At the opening of the petition Lord Goddard C.J. raised the question whether the Board was competent in view of the fact that the petitioners sought to appeal directly to the Board without first going to the Court of Appeal for Eastern Africa. After counsel's submissions on that point, the Board heard the petition.

Held, dismissing the petition, that it was not necessary to decide whether the applicants' failure to appeal first to the Court of Appeal for Eastern Africa was a ground for refusing leave, because apart from that question, no grounds had been established which would justify the Board in advising Her Majesty to grant leave.

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[3] For the petitioners: *D. N. Pritt Q.C.*, *R. K. Handoo* and *Ralph Millner* (instructed by Hy. S. L. Polak & Co.). For the Crown: *Melford Stevenson Q.C.*, *A. G. Somerhough Q.C.* and *J. G. Le Quesne* (instructed by Burchells).

Appeal—*Privy Council—leave to appeal—evidence found by illegal search*

KURUMA *v.* R.[4] (Judicial Committee of the Privy Council: Lords Morton of Henryton, Cohen and Keith of Avonholm: July 19, 1954) (*The Times*, July 20, 1954).

K. applied for special leave to appeal against a judgment of the Court of Appeal for Eastern Africa which had dismissed his appeal against his conviction by the Supreme Court of Kenya on a charge of unlawful possession of ammunition contrary to Regulation 8A (1) (*b*) of the Emergency Regulations, 1952, for which he was sentenced to death.

The only evidence implicating K. was that of a police constable who said that he found two rounds of ammunition (the subject-matter of the charge) in K.'s pocket when he stopped and searched him at a road block. K.'s defence was that the ammunition had been planted on him. It was submitted on K.'s behalf that the Emergency Regulations conferred power of search without a warrant only on a police officer of the rank of assistant-inspector or above. The police constable had no search warrant and therefore his search of K. was illegal and was found to be so by the Court of Appeal. It was submitted that evidence obtained in the course of an illegal search ought not to be admitted in support of a criminal charge later preferred against the person searched.

The Board granted leave to appeal.

Betting—*Place used for purpose of betting—whether motor-car a place*

R. *v.* HUNT; R. *v.* SCRIVEN[5] (East Ham Magistrates' Court: July 19, 1954).

The defendants were summoned for using a car for the purpose of betting contrary to section 3 of the Betting Act, 1853. Police officers gave evidence that they had kept a car under observation at various times during four days. The car, which they later learned belonged to S., remained parked at the same point for most of the time, although it occasionally moved a short distance and then returned. During the course of the observation various people were seen to come up to the car and pass coins wrapped in paper through the window to H; some were seen to write betting slips and once H. was seen to pay out money to someone. When arrested and searched, H. was found to have various sums of money, a list and paying-out book and thirty-seven betting slips on him. Both defendants denied that the car was used for betting. The defence contended, citing *Powell* v. *Kempton Park Racecourse* ([1899] A.C. 143), that a car could not be "a place" used for betting within the meaning of section 3, since is was movable whereas "a place" had to be fixed. The prosecution denied that a place had to be fixed so long as there was sufficient localisation of the betting business and referred to *Brown* v. *Patch* ([1899] 1 Q.B. 892).

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[4] For the appellant: *Dudley Collard* (instructed by Gaster & Turner). For the Crown: *D. A. Grant* (instructed by Charles Russell & Co.).

[5] For the prosecution: *John Hazan* (instructed by the Solicitor to the Metropolitan Police). For the defendants: W. Noice, Solicitor.

Held that a car was a place for the purposes of section 3. The case was found to be proved and the defendants were fined. [Reported by John Hazan, *Barrister-at-Law.*]

COMMENTARY. The Betting Act, 1853, s. 1, provides: "No house, office, room, or other place shall be opened, kept or used for the purpose of . . . any person using the same . . . betting with persons resorting thereto . . ."; s. 3 provides: "Any person who being the owner or occupier of any house, office, room, or other place, or a person using the same, shall . . . use the same for the purposes herein-before mentioned . . . [shall be liable to a penalty].

In both *Powell* v. *Kempton Park Racecourse* and *Brown* v. *Patch, supra,* the interpretation of the word "place" was considered by the court, although in the first case the primary issue concerned was the use of a public enclosure at a racecourse. In *Brown* v. *Patch,* Channell J. said: "The important question is not so much, what is a place? but what is the character of the user of it? and although the words used are 'house, office, room or other place,' and it is clear that, according to the ordinary rule, 'place' must be something *ejusdem generis* with 'house, office, room,' yet the analogy is with respect to the way the place is used rather than with respect to the way in which it is constructed."

See Archbold, 33rd ed., 1413; Stone, 86th ed., 1025, 1029; Stroud's *Judicial Dictionary,* 3rd ed., Vol. 3, 2201.

Coroner—*Inquest—alteration of inquisition by coroner*

R. *v.* HOWE, *ex p.* JONES [6] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Slade JJ.: July 19, 1954) (*The Times,* July 20, 1954).

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[6] For the applicant: *Michael Hoare* (instructed by Claude Barker & Partners). For the respondent: *E. B. McLellan* (instructed by Holder Roberts & Co.).

An acting coroner applied for an order to quash an inquisition on P. on the grounds that the coroner had failed to view the body before the inquest and to make an accurate record of the evidence. The inquisition recorded that P. fell downstairs in a fit. After the hearing the coroner was approached by P.'s relatives and persuaded that the finding was not justified by the evidence. He then altered the inquisition. His counsel said that the coroner wished to apologise for his mistake.

The court ordered a fresh inquest but that the body should not be dug up.

Courts-martial—*Appeals—grounds for leave to appeal*

R. *v.* GRIFFITHS[7] (Courts-Martial Appeal Court: Lord Goddard C.J., Cassels and Slade JJ.: July 29, 1954) (*The Times*, July 30, 1954).

G., a former army captain, applied for leave to appeal against his conviction by a court-martial at Nairobi, Kenya, on charges of doing grievous bodily harm, intention to do grievous bodily harm and conduct of a disgraceful and cruel nature in connection with members of Mau Mau. G. had been sentenced to be cashiered and to five years' imprisonment. His counsel asked that further evidence should be heard from one of the witnesses, H., who had given evidence in direct conflict with a statement which he had earlier made to the defence and whom the court-martial had not allowed to be treated as a hostile witness and cross-examined about his previous statement. The court-martial should have been advised to disregard H.'s evidence. Lord Goddard C.J. said that the judge-advocate's summing-up was extremely good and it was not his function to tell the court which witnesses they should believe.

Held, dismissing the application, that there was no ground on which the court could possibly give leave to appeal.

Criminal Libel—*Privileged occasion—malice*

R. *v.* WOOD[8] (Birmingham Assizes: Commissioner Sir Ellis Goodman Roberts, Q.C.: July 13, 14, 1954).

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[7] For the applicant: *Norman Skelhorn Q.C., I. N. Duncan Wallace* (instructed by Bell, Brodrick and Gray).

[8] For the prosecution: *Michael Davies* (instructed by Charles Wareing, Birmingham). For the defendant: *H. Milmo* (instructed by Rabnett Conway & Co., Birmingham).

W., the publisher and editor of a monthly magazine *Chess* was charged under section 5 of the Libel Act, 1843, with maliciously publishing a defamatory libel and under section 4 of the Libel Act, 1843, with maliciously publishing a defamatory libel knowing the same to be false. The alleged libel was contained in a letter sent by W. to the chairman of the Monmouthshire County Chess Association concerning the foundation of a Welsh Chess Union about which there had been some correspondence and which W. had promised to support. On learning by means of a circular that M. was concerned in the project W. withdrew his promise of support by a letter in which he wrote: " Your whole attitude makes it clear that you are a Morry stooge. When you have become in due time disillusioned about this ex-gaol-bird, and have returned to sanity, please contact me again —unless you are so fed up that you drop out of chess altogether as some have done." W. pleaded Not Guilty. His counsel submitted :— (1) the case was not the kind of case to be tried in a criminal court; (2) the letter was not calculated to cause a breach of the peace; (3) the occasion was privileged; (4) there was no evidence of malice. The prosecution submitted that the writing of the letter in itself constituted evidence of malice. The Commissioner ruled that the letter was written on a privileged occasion; W. was entitled to withdraw his support from the Union if he wished and to give his reasons for doing so. He directed the jury that in order to find W. guilty the jury must be satisfied that the words as written by W. were " criminally malicious."

The jury acquitted W. on both charges. [Reported by Felix Taylor, *Barrister-at-Law*.]

COMMENTARY. See Archbold, 33rd ed., 1318, 1319, 1329.

Evidence — *Admissibility — evidence concerning previous charges not carried to conviction*

R. *v.* NICOLOUDIS [9] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Slade JJ.: July 28, 1954) (*The Times*, July 29, 1954).

N. was convicted of obtaining £120 by means of a forged cheque. The case for the prosecution was that N. had obtained a cheque from G.'s cheque book which was forged for £120, took it to the bank and obtained money for it. N.'s defence was that he never handled the cheque at all and that G. had actually signed it himself. In cross-examination N. was asked whether he had not been concerned with forged cheques on a previous occasion. He had in fact been previously charged with forgeries connected with his guardian but the case had been dropped at his guardian's request. N. appealed on the ground that the recorder had wrongly permitted cross-examination about other forged cheques.

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[9] For the appellant: *S. H. Noakes* (instructed by Summer & Co.). For the Crown: *Victor Durand* (instructed by the Solicitor, Metropolitan Police).

Held, allowing the appeal and quashing the conviction, that the House of Lords in *Maxwell* v. *D. P. P.* ([1935] A.C. 309) had laid down that even if an accused put his character in issue one could not ask him whether he had been previously charged with an offence of which he had been acquitted or where the case had not been carried to conviction. Had the issue been whether the accused knew that the cheque was forged, it might have been possible to show that he was dealing with other forged cheques, but in the present case N.'s defence was that he was not the person who went to the bank and therefore the questions were irrelevant and highly prejudicial.

COMMENTARY. In *Maxwell* v. *D. P. P., supra,* Viscount Sankey L.C. said, at p. 320: "The mere fact that a man has been charged with an offence is no proof that he committed the offence. Such a fact is, therefore, irrelevant; it neither goes to show that the prisoner did the acts for which he is actually being tried nor does it go to his credibility as a witness."

See Archbold, 33rd ed., 493.

Magistrates' Courts — *Constitution — justices to be present during the whole of the proceedings.*

MUNDAY *v.* MUNDAY[10] (Probate, Divorce and Admiralty Division: Lord Merriman P. and Davies J.: June 25, 1954) ([1954] 1 W.L.R. 1078; [1954] 2 All E.R. 667).

An application by a husband to vary an order for the maintenance of his wife was spread, owing to adjournments, over three separate days. Three justices were present on the first day, the same three and two additional ones on the second day, and on the third day the first three justices were absent, and the matter was heard by the second two justices who were joined by another justice who had not previously been present. On an appeal against the dismissal of the husband's application :—

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[10] For the appellant: *Basil Garland* (instructed by Charles Russell & Co. for Johnson & Clarence, Midhurst). For the respondent: *N. R. Blaker* (instructed by Gibson & Weldon for Burley & Geach, Petersfield).

Held, the provisions of section 98 (6) of the Magistrates' Courts Act, 1952, that "the justices composing the court before which any proceedings take place shall be present during the whole of the proceedings" had not been complied with. The provisions are mandatory and contain no dispensing power which is remotely relevant to these proceedings. The case was pre-eminently one in which the principle that justice must not merely be done, but must manifestly be seen to be done, had been infringed. The case was remitted for a rehearing before an entirely fresh panel of justices and a different clerk.

COMMENTARY. See Stone, 86th ed., 110.

Merchandise Marks—*False trade description—goods underweight—vicarious responsibility*

MEAR *v.* BAKER[11] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Slade JJ. : July 27, 1954).

M., an inspector of weights and measures, preferred an information against B., a butcher, at Tower Bridge magistrates' court alleging that B. had in his possession in his shop in South East London, for the purpose of trade, goods, namely, turkeys, to which false trade descriptions had been applied contrary to section 2 (2) of the Merchandise Marks Act, 1887. The magistrates found that on December 22, 1953, when M. visited B.'s shop four turkeys on display therein had tickets round their necks on which were printed small ink figures showing the weights of the birds. M., who weighed the birds, found that the weights of the birds were less than the weights marked on the tickets and B. agreed that this was so. The birds had been weighed and the tickets marked by B.'s assistant and B. did not know that the tickets had been wrongly marked. M. contended before the magistrate that the figures on the tickets amounted to a false trade description and that B. was vicariously responsible for the acts of his servant, and was therefore guilty of the offences charged. B. contended that the figures did not amount to a false trade description as they were so small that they could not be seen by or influence any prospective customer. He also denied that he was vicariously responsible. The magistrate accepted B.'s contentions and dismissed the information. M. appealed.

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[11] For the appellant: *Paul Wrightson* (instructed by the Solicitor, London County Council). For the respondent: *A. M. Wallace* (instructed by W. R. Millar & Sons).

Held, that B. undoubtedly had in his possession for the purpose of trade goods to which a false trade description was applied as the figures on the tickets were intended to represent the weight of the turkeys and those figures were false. That was an infringement of the Act whether or not the description was put on to mislead a customer or any other person. The fact that B.'s assistant had weighed the birds and marked the tickets without B.'s knowledge made no difference as B. must take responsibility for his assistant's act, an employer being vicariously liable for the acts of his servants. The magistrate had been wrong in dismissing the information and the case must go back with a direction to him to convict. [Reported by Mrs. E. M. Wellwood, *Barrister-at-Law*.]

COMMENTARY. The present section 2 (2) of the Merchandise Marks Act, 1887, was replaced in 1953 by the Merchandise Marks Act, 1953, s. 4.

It was held in *Coppen* v. *Moore* (*No.* 2) [1898] 2 Q.B. 306, that the effect of section 2 (2) was to make a master criminally liable for the acts of his servants done in the course of their employment in contravention of the section even when done contrary to his orders. The defences under that section were, however, available to the master and since in that case the master had acted innocently, in the sense that he had acted in good faith and had done all that was reasonably possible to prevent the commission of offences under that section by his servants, he was not liable. In *Slatcher* v. *George Mence Smith* [1951] 2 K.B. 631, it was held that the words "that otherwise he had acted innocently" were to be construed as meaning "had acted inadvertently or under some mistake of fact."

See Archbold, 33rd ed., 1352; Stone, 86th ed., 1564.

Murder—*Insanity—responsibility of mental defective*

R. *v.* ADAMS [12] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Cassels JJ.: July 12, 1954) (*The Times*, July 13, 1954).

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[12] For the appellant: *Malcolm Wright Q.C.*, *Hugh Park* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *W. R. Hornby Steer* (instructed by the Director of Public Prosecutions).

A., a mental defective, escaped from the place where he had been sent by order of the court, and went to the house of R., to whom he was said to be attached. He was with R. for five minutes, while two police officers were outside, and stabbed her to death. A. was found guilty of R.'s murder and sentenced to death. On appeal it was submitted that the evidence of the doctors called on both sides showed that A. was insane.

Held, dismissing the appeal, that not all the doctors had agreed and one doctor of considerable experience came to the conclusion that A. did know what he was doing and that it was wrong, but the case would no doubt receive careful consideration elsewhere. A person might be quite mad in some respects and properly certifiable as insane, but if he knew the difference between right and wrong he was in law responsible.

Murder — *Provocation — standard of the reasonable man — effect of personal infirmities*

Bedder *v.* Director of Public Prosecutions [13] (House of Lords: Lord Chancellor, Lords Porter, Goddard C.J., Tucker and Asquith of Bishopstone: July 30, 1954) ([1954] 1 W.L.R. 1119).

B., aged 18, knowing that he was impotent, attempted to have intercourse with X, a prostitute, and failed. He then stabbed her twice, the second blow penetrating her heart. B. made several statements to the police in none of which did he suggest that he had received any physical violence from X. At his trial on a charge of murdering X, B. said that, having failed to have intercourse with X, she spoke to him in a way that suggested that she was laughing at him. X wanted to get away and said that if he would not let her go she would want more money and that he was wasting her time. B. then said that X slapped his face, punched him in the stomach several times and kicked him. He did not remember using the knife but she fell and he then saw it in his hand. In his summing-up the judge directed the jury that the question of provocation would arise if X's conduct to B. was such as would cause a reasonable person to lose his self-control to such an extent that he might use violence of the degree and nature used by B. The judge further directed the jury that they must consider the effect that any acts, conduct and words would have on a reasonable, ordinary person; "infirmity of body or affliction of mind of the assailant is not material in testing whether there has been provocation by the deceased to justify the violence used so as to reduce the act of killing to manslaughter." B. was convicted of murder and appealed to the Court of Criminal Appeal on the ground that the crime was manslaughter and not murder and that the judge should have directed the jury that the test to apply was to consider whether a reasonable man affected by impotency, as the accused was, would have been provoked by X's acts and manner so as to have been driven by a transport of passion and loss of control to the degree of violence which produced X's death. The Court of Criminal Appeal (Hilbery, Cassels and Havers JJ.) dismissing the appeal held that the judge's direction was correct and it was the reasonable person and not the particular individual with his personal peculiarity who had to be taken as the standard to judge whether the provocation was sufficient to reduce the crime to manslaughter. On appeal:—

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[13] For the appellant: *A. P. Marshall Q.C., Oliver Kitson* (instructed by C. D. Geach, Leicester). For the Crown: *Sir Lionel Heald Q.C.*, *A.-G., Richard Elwes Q.C.* and *J. P. Stimson* (instructed by the Director of Public Prosecutions).

Held, dismissing the appeal, that the question raised by the appeal was amply covered by authority. In the face of *Holmes* v. *Director of Public Prosecutions* ([1946] A.C. 588) the trial judge could not properly have given the jury any other direction than that which he did. There was neither authority nor reason for the proposition that on the question of provocation the test should have been the reaction of the impotent reasonable man in the circumstances. It would be plainly illogical not to recognise an unusually pugnacious or excitable temperament as a matter to be taken into account, but yet to recognise for that purpose some unusual physical characteristic, whether it was impotence or something else.

COMMENTARY. This case will be considered in an article in a future issue of this Review.

See Archbold, 33rd ed., 936.

Sentence—*Imprisonment—possession of firearm with intent to injure*

R. *v.* HANSON[14] (Court of Criminal Appeal: Lord Goddard C.J., Hilbery and Cassels JJ.: July 12, 1954) (*The Times*, July 13, 1954).

H. pleaded guilty to having in his possession a firearm with intent to cause serious injury, and was sentenced to four years' imprisonment. H., aged twenty-seven, had been driving along a road when he shot at another car with an air pistol. When arrested he said: "I was driving with my little finger through the trigger guard. I was doing this because I am a western film fanatic . . . I was in my mind stalking the car and driver just like they do on the pictures . . . I . . . fired a slug at the rear tyre, trying to burst it. . . ." On appeal against sentence:—

Held, reducing the sentence to twelve months' imprisonment, that it was obvious that a sentence had to be passed on a man capable of such criminal folly at the age of twenty-seven. The court did not think that the sentence of four years was justified but if H. did any such mad thing again he would probably go to prison for a very long time.

COMMENTARY. See Archbold, 33rd ed., 877.

Trial—*Defence—defence not pleaded by accused—powers of the judge—compulsion*

SEPHAKELA *v.* R.[15] (Judicial Committee of the Privy Council: Earl Jowitt, Lord Keith of Avonholm and Mr. L. M. D. de Silva: July 13, 1954) (*The Times*, July 14, 1954).

S. was tried jointly with seven other men on a charge of ritual murder before the High Court of Basutoland. S. and six of the others were convicted and one acquitted. S. appealed on the ground, *inter alia*, that the trial judge misdirected himself with regard to the prosecution evidence, which it was submitted, established that S. remained present at the murder and was concerned in it only through compulsion, coercion and fear. The trial judge with reference to the defence of compulsion said in his judgment : " In my view such a suggestion is untenable because, first, this accused did not rely on it in his evidence—he said that he was not at the killing, and, secondly, there is not sufficient evidence that he took part in the killing because he was in fear of his life or of serious bodily injury."

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[14] For the appellant: *S. Bolton* (instructed by G. M. C. Thompson, Halifax). The Crown was not represented.

[15] For the appellant: *S. N. Bernstein*, *B. J. G. de Swaan* (South African Bar) (instructed by Hy. S. L. Polak & Co.). For the Crown: *Frank Gahan Q.C.*, *Anthony Cripps* and *J. G. Le Quesne* (instructed by Charles Russell & Co.).

Held, dismissing the appeal, that if the first part of the passage above meant that the judge felt himself precluded from considering the defence of compulsion because S. had pleaded a defence of alibi, that would have been a misdirection in law; but the judge had not meant more than that, as S. had not himself said that he acted under compulsion, the judge was deprived of evaluating the somewhat equivocal evidence in the light of S.'s own evidence as to his acts and motives.

On the question whether there was any evidence on which it could be held that S. acted under compulsion, the evidence fell far short of what was necessary in law to establish such a defence.

COMMENTARY. See Glanville Williams, *Criminal Law,* The General Part, Chap. 18; Archbold, 33rd ed., 22.

Acts and Orders

Agriculture

WARE POTATOES ORDER, 1954 (S.I. No. 986): operative August 1, 1954.

Prices and marketing arrangements for ware potatoes of the 1954 crop are prescribed. The use of stockfeed potatoes is regulated and records must be kept of transactions concerning such potatoes.

For penalties for infringements, see Defence (General) Regulations, 1939, reg. 92.

The Order of 1953 (S.I. No. 1124) as amended, is revoked.

Animals

PROTECTION OF ANIMALS (ANAESTHETICS) ACT, 1954 (2 & 3 Eliz. 2, c. 46): operative September 1, 1954.

Any person who performs an operation to which section 1 applies without the use of an anaesthetic is deemed to perform it without due care and humanity and is guilty of an offence under section 1 of the Protection of Animals Act, 1911, and section 1 of the Protection of Animals (Scotland) Act, 1912.

The section applies to any operation with or without the use of instruments which involves interference with sensitive tissues or the bone structure of an animal with a few specific minor exceptions. It does not apply to operations on birds, fowl, fish and reptiles. As a result all operations with a few exceptions, are within the Act instead of the limited number of operations which were covered by the 1919 Act, which is now repealed.

NON-INDIGENOUS RABBITS (PROHIBITION OF IMPORTATION AND KEEPING) ORDER, 1954 (S.I. No. 927): operative August 1, 1954.

The importation into and keeping within Great Britain of all species of rabbits except that species commonly called the European rabbit is prohibited.

As to infringements of the Order, see the Destructive Imported Animals Act, 1932, s. 6.

REGULATION OF MOVEMENT OF SWINE ORDER, 1954 (S.I. No. 911): operative July 5, 1954.

The Order of 1950 (S.I. No. 1302), as amended, is revoked and replaced. The sale of pigs is prohibited in any market, fairground or saleyard unless authorised by the local authority, and the movement of pigs from any live weight certification centre, market, fairground or saleyard or from the premises of any pig dealer is restricted.

For penalties for infringement see the Diseases of Animals Act, 1950, ss. 78–81, 83.

SHEEP SCAB (AMENDMENT) (REVOCATION) ORDER, 1954 (S.I. No. 912) : operative July 5, 1954.

The Order of 1951 (S.I. No. 1086), which exempted movements of sheep supervised by an official of the Ministry of Food from certain provisions of the Sheep Scab Order, 1938 (S.R. & O., 196), is revoked.

Armed Forces

See MOTOR VEHICLES REGULATIONS, p. 730, below.

Civil Aviation

AIR NAVIGATION REGULATIONS, 1954, RADIO (S.I. No. 900) : operative August 1, 1954; GENERAL (S.I. No. 925) : operative August 1, 1954 (but see reg. 24).

The Regulations of 1949 (S.I. Nos. 374, 375), as amended, are replaced with certain further amendments. In the Radio Regulations, the principal change is that the medical requirements prescribed for the physical and visual standards are revised. In the General Regulations the principal changes are : (1) after January 1, 1955, public transport flying machines flying at night, whose maximum authorised weight exceeds 12,500 pounds must carry equipment to observe the existence and build-up of ice and those authorised to carry more than 19 persons must have an emergency lighting system (reg. 24 (7)); (2) the requirements as to the carriage and use of oxygen in such planes have been revised (reg. 24 (8)); (3) there are new requirements as to the testing of personnel and the records kept of such tests (reg. 44); (4) the provisions requiring pilots to be made familiar with the route on scheduled journeys are revised (reg. 45); (5) where the applicant is under 40, a private pilot's licence may be granted for 24 months (reg. 83); (6) holders of commercial pilot's licences which include an instrument rating, may fly certain public transport aircraft (reg. 97); (7) holders of senior commercial pilot's licences may fly passengers in public transport flying machines up to 30,000 pounds maximum authorised weight (reg. 108); (8) the requirements as to flying experience are altered for applicants for such licences (reg. 110); (9) the medical requirements prescribed for physical and visual standards are revised.

For penalties, see Air Navigation Order, 1954 (S.I. No. 829), articles 67, 73.

Defence Regulations

DEFENCE REGULATIONS ORDERS, No. 5 (S.I. No. 952): operative July 21, 1954; No. 6 (S.I. No. 953): operative September 1, 1954.

Regulation 54B of the Defence (General) Regulations, 1939, which gives a competent authority power to give directions to a local authority concerning the collection of salvage or the appointment of food control committees, is revoked. See [1954] Crim.L.R. 633, 642.

Regulation 88, which authorised the charge of fees in respect of permits, licences, certificates or other documents issued under the Regulations, is revoked.

Regulation 57D, which gave the Secretary of State power to exempt acetylene from the provisions of the Explosives Act, 1875, is revoked with effect from September 1, 1954.

Explosives

See DEFENCE REGULATIONS (NO. 6) ORDER, above.

Food and Drugs

SHIPS' STORES (CHARGES) (REVOCATION) ORDER, 1954 (S.I. No. 889): operative July 4, 1954.

The Order of 1952 (S.I. No. 750), as amended, which imposed certain charges on persons supplying food to foreign-going ships, is revoked.

IMPORTED CANNED FISH (REVOCATION) ORDER, 1954 (S.I. No. 959): operative October 1, 1954.

Price controls on imported canned salmon and crab are removed.

FOOD DOCUMENTS (FEES) (REVOCATION) ORDER, 1954 (S.I. No. 883); SEIZURE OF FOOD (REVOCATION) ORDER, 1954 (S.I. No. 884): both operative July 4, 1954; RETAIL PRICES

(NOTICES) (REVOCATION) ORDER, 1954 (S.I. No. 958): operative July 22, 1954.

The following orders are revoked: the Food Documents (Fees) Order, 1943 (S.R. & O. No. 1496), which provided for the replacement of lost or defaced food rationing documents upon payment of a fee, the Seizure of Food Order, 1948 (S.I. No. 953), which provided for the seizure of food in respect of which there had been a contravention of the Defence Regulations or an order made under them, and the Retail Prices (Notices) Order, 1944 (S.R. & O. No. 167), which required food retailers to make available a list showing the maximum prices for certain foods.

Highways

OPEN-CAST COAL (HIGHWAY) ORDERS (REVOCATION) (NO. 2) ORDER, 1954 (S.I. No. 906): operative July 17, 1954.

Several orders made by the Minister of Fuel and Power under regulation 16 of the Defence (General) Regulations, 1939, stopping up highways in certain specified districts, are revoked.

Hire Purchase

HIRE PURCHASE AND CREDIT SALE AGREEMENTS (CONTROL) (REVOCATION) ORDER, 1954 (S.I. No. 935): operative July 14, 1954.

The Hire Purchase and Credit Sales Agreements (Control) Order, 1952 (S.I. No. 121), as amended, which controlled the disposal and possession of certain goods under hire-purchase and credit sales agreements, is revoked.

London

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 13 (S.I. No. 881): operative July 16, 1954, No. 14 (S.I. No. 938): operative July 29, 1954; No. 15 (S.I. No. 968) operative July 27, 1954.

The Consolidation Regulations, 1938 (S.R. & O. No. 455), are amended and a prescribed route is detailed for the road between Thornton Road and Willett Road by Thornton Heath Pond, Croydon. Prescribed routes are detailed for Staffordshire Street, Horse Lane and Sumner Road. Fines not exceeding £5 for a first offence and £10 for a second offence may be imposed for contraventions.

London Traffic (Prohibition of Waiting) Regulations, 1954, Woodbridge, Guildford (S.I. No. 882) : July 16, 1954; High Street, Swanley (S.I. No. 904) : operative July 22, 1954.

Waiting is restricted in Woodbridge Road and Ladymead Road, Woodbridge, Guildford, and in the High Street, Swanley, Kent. Fines not exceeding £5 may be imposed for contraventions.

Merchant Shipping

Irvine Pilotage (Amendment) Order, 1954 (S.I. No. 950) : operative August 2, 1954.

The limits of the Irvine pilotage district are altered and pilotage is no longer compulsory within that area.

Pensions

Local Government Superannuation (Surrender of Superannuation Allowance) Rules, 1954 (S.I. No. 879) : operative July 6, 1954.

A clerk of the peace may in certain circumstances and subject to certain conditions surrender part of a superannuation allowance in exchange for the grant of a pension to a dependant whom he names.

Police

See Brakes on Pedal Cycles Regulations, below.

Rag Flock

Rag Flock and Other Filling Materials Regulations (S.I. No. 985) : operative August 3, 1954.

The impurities test for certain types of woollen felt and and woollen mixture felt used as filling materials and the list of analysts prescribed by the Order of 1951 (S.I. No. 1846) are altered.

Road Traffic

Brakes on Pedal Cycles Regulations, 1954 (S.I. No. 966) : operative September 1, 1954.

Every pedal bicycle or tricycle which is not mechanically propelled, if it has any wheel the outside diameter of which, including the tyre, exceeds 18 inches must be equipped with a prescribed braking system. If it is so constructed that one or more of the wheels is incapable of rotating independently of the pedals, the braking system must operate on the front wheel or wheels, otherwise the cycle must have two independent braking systems, one operating on the front wheel or both the front wheels and the other on the rear wheel or one of the rear wheels; in the case of a tricycle not adapted for the carriage of goods it is sufficient if it has two braking systems operating on the front wheel if it has two rear wheels, or the rear wheel if it has two front wheels. Every other cycle must be equipped with one braking system.

All brakes must be efficient and kept in proper working order, and they are not so if the brake operates directly on the tyre of a wheel. A police officer in uniform may test and inspect the brakes of any cycle on a road and if the cycle has been involved in an accident within the previous 48 hours he may do so on any premises where the cycle is found, subject to the consent of the owner of the premises.

The regulations do not apply to cycles so constructed that the pedals act directly on the wheel without any gearing, chain or other device, or to cycles brought temporarily into Great Britain, whose brakes comply with the requirements of the International Convention on Road Traffic, 1949.

The penalty for contravention of the Regulations is a fine not exceeding £20.

MOTOR VEHICLES REGULATIONS, 1954, CONSTRUCTION AND USE (AMENDMENT) (S.I. No. 942); VARIATION OF SPEED LIMIT (AMENDMENT) (S.I. No. 943); CONSTRUCTION AND USE, TRACK LAYING VEHICLES (AMENDMENT) (S.I. No. 944): all operative July 22, 1954.

Vehicles used by visiting forces (see [1954] Crim.L.R. 558) are exempted from the speed limits prescribed for particular vehicles in the same way as vehicles used by the home forces; and also from certain requirements as regards the construction, weight, equipment and use of motor-vehicles and trailers and track-laying motor-vehicles and trailers used on roads.

Scotland

Animals. See p. 725.

Letters to the Editor

Dangerous and Careless Driving

Sir,

Perhaps a layman may be permitted to make some observations on the letter from "Clerk to Borough Justices" on page 647. I am in complete sympathy with his statement that what is wanted is a new approach to the problem of dangerous and careless driving, but I do not think that the changes which he suggests are the right way to go about this.

His proposed new section to replace sections 11 and 12 of the Road Traffic Act, 1930, would, I suggest, lead to confusion and would merely substitute for the procedural difficulties which it would eliminate, other difficulties of a more serious nature. I submit that the right way to deal with this particular aspect of the matter is to give the courts a power (similar to that contained in section 34 of the Road Traffic Act, 1934) on any charge under section 11, to convict for the lesser offence of careless driving.

The suggestion that a defendant should be deprived of his right of trial by jury is surely not one which can be justified. A charge of dangerous driving is just as serious for the defendant as any other criminal charge, and the fact that it is considered by some authorities that juries tend to view such offences somewhat more leniently than do magistrates is not a ground for abolishing the jury in such cases: it is a matter for the inculcation of the right opinion in the community. It is my belief that the reason why defendants frequently choose to be tried by jury is not that they believe that a jury will acquit them but that they will get a fairer trial than before magistrates. It is unfashionable to criticise magistrates, but it is a fact that the motoring community as a whole consider that the justice that they receive in petty sessional courts is on the slot machine principle.

It is my belief that the proper way to tackle the problems of the roads today is by mobile patrols, with the power to stop and admonish those whose driving, while not necessarily dangerous, is not up to the standard required by present-day conditions; but this is not a matter for your *Review*. Where prosecution is necessary, however, I submit that the freer use of the penalty of suspension of the driving licence could be far more effective than any other course. I would make suspension for one month automatic on any conviction for careless driving, and for not less than three months on any conviction for dangerous driving.

Yours faithfully,

SUBJICIO.

Evidence of Arrest

Sir,

The series of articles "A Day in a Police Court" by A. E. Jones make enjoyable reading, are informative but are somewhat lacking in reliability.

It is appreciated that they are merely intended to portray a typical day's work in a magistrates' court, but may I suggest a little more attention to accuracy of procedure. I refer in particular to the article in the seventh instalment headed "Housebreaking and Larceny." For the benefit of Police recruits and the uninitiated may I submit the following observations:—

1. No police officer would have preferred so many charges at the onset.
2. At the initial appearance of the accused the clerk would not "prepare to take a deposition."
3. Evidence of arrest would of necessity be brief and confined only to those details necessary to justify the arrest. The question of establishing prima facie cases against the accused does not arise until their final appearance before the magistrate.
4. Statements taken from the accused would not have been given at this stage, and in any case would be produced by the detective officer who took them.

Any derision one may feel against Mr. Sutterthwick's court procedure is immediately expelled by his spontaneous generosity in the commendation of police officers—even though somewhat premature. In any event it gave the court inspector something to do—in future perhaps *he* will be the one to make applications for remand and to oppose bail if necessary?

Yours faithfully,

Stanley N. S. Pearce,

Plymouth. Inspector of Police.

[Mr. Jones writes: "The answer is that there is no standard practice in a number of matters of procedure in the magistrates' courts. Consequently, it is impossible to write an account which will appeal to every reader as a true representation of the particular magistrates' court that he has experience of.

I can assure your correspondent that the points he criticises as inaccurate are, in fact, a perfectly true picture of what is common form in quite a number of magistrates' courts. There is also a good reason for all the points of practice with which your correspondent differs, but I do not suppose that you have space to go into that.]

Glossary

Dear Sir,

At p. 571 of [1954] Crim.L.R., a reviewer reminds us that "there are many newcomers to the law whose Latin is of the barest, and whose ability to put Latin maxims into English, let alone translate their meaning accurately, is small."

Among these we must include that very welcome newcomer to the law, the *Criminal Law Review*: "non constat" does not and cannot mean "it does not follow." That is the meaning of "non sequitur," and the meaning of "non constat" is "it is not agreed." Perhaps, Sir, your otherwise excellent Glossary may be amended accordingly.

Yours faithfully,

JOHN SOUTHAM,

Temple. Barrister-at-Law.

[Non constat. It does not appear; it is not proved (that the asserted or implied conclusion follows from the premises): Wharton's *Law Lexicon*, 14th edition.]

Books and Periodicals

Reviews:

The Power of Poison. By John Glaister, Professor of Forensic Medicine in the University of Glasgow. London: Christopher Johnson. 1954. 266 and (bibliography) 5 and (index) 1 pp. (18s. net.)

In *The Power of Poison* Professor J. Glaister has reviewed a number of celebrated poison trials selected to show the varying motives influencing the murderer and taking each case from a known beginning to the end of the trial emphasising the circumstances in the cause for suspicion arising after the death of the victim so often aroused by the boastful or overanxious remarks of the accused. By its nature poisoning is a secret and deliberate crime and proof as distinct from suspicion may be difficult. Dr. Glaister as Professor of Forensic Medicine in the University of Glasgow is well qualified to understand and explain the difficulties that may be encountered in establishing such proof and this he does in the chapter on "Establishment of Proof."

The symptoms caused by most known poisons are simulated at some stage by disease and if the poison is used in small doses at intervals, as has been done with arsenic, a diagnosis of natural disease is quite likely. Many poisoners come to grief in giving so much of the poison that the symptoms are too exaggerated to escape notice. The evidence of poison is dealt with in Chapter 3 and the limitations imposed on the toxicological expert explained. Here is emphasised the stupidity of the poisoner, for example, Armstrong, who having given his potential victim, Martin, one dose of arsenic sufficient to cause severe gastro-intestinal inflammation called to inquire as to his health and suggested that he might expect another attack very soon. The suspicion aroused by this conduct resulted in the exhumation of the body of Mrs. Armstrong eight months after her death and he was found guilty of her murder by arsenic.

Chapter 5 deals with the subject of mass poisoning. In the Middle Ages when the properties of arsenic had become known poisoning was conducted on such a wholesale scale that the majority of eminent personages required the services of the food and wine taster to protect them. In Italy, in the time of the Borgias, poisoning was a normal hazard of life. One of the most striking cases of mass poisoning is that of the Hungarian midwife Fazekas who over a period of about twelve years added to her income as a midwife and abortionist by poisoning or providing the poison for the removal of unwanted husbands, lovers and children. The defences of society against the poisoner dealt with in Chapters 6 and 7 show the importance of our laws relating to the sale of poisons and the issuing of death and cremation certificates.

Methods and motives in relation to poisoning make a very interesting section and show the extension of the range of poisons used. Novelties are usually introduced by persons with knowledge of and easy access to poisons and that accounts for the prominence of medical men in famous poison trials. Greed is shown to be so often the motive that has caused so many poisoners to risk so much often for very little. This book with its lucid description of the course of the selected cases should have wide appeal to members of the medical and legal professions as well as to the general public.

H. E. ARCHER.

Guns, Drugs and Deserters. By Norman Phillips. London: T. Werner Laurie, Ltd. 1954. 176 pp. (12s. 6d.)

The Special Investigation Branch was set up to combat crime involving servicemen; its members were, in the main, policemen. This book is concerned primarily with the work of the Branch in the Middle East and relates some of their investigations ranging from the theft of three Cromwell tanks in Palestine to the religious fanatic who cut out his own tongue.

The accounts are interesting, but rarely exciting, and would profit from editing; there are frequent repetitions and irrelevancies which break up the narratives and on the whole they are not well written.

PETER ALLSOP.

Books Received:

Current Legal Problems, 1954. Edited by G. W. Keeton and G. Schwarzenberger. London: Stevens & Sons, Ltd. 1954. vii and 227 and (tables and index) 9 pp. (32s. 6d. net.)

Trial of John Thomas Straffen. Notable British Trials Series, Vol. 80. Edited by L. Fairfield, C.B.E., M.D., and E. P. Fullbrook. London: William Hodge & Co., Ltd. 1954. xiii and 263 and (appendices) 36 pp. (no index). (15s. net.)

The Home Office. By Sir Frank Newsam, K.C.B., K.B.E., C.V.O., M.C. London: George Allen & Unwin, Ltd. 1954. 217 and (index) 7 pp. (15s. net.)

Articles:

British Journal of Delinquency, Vol. 5

The homosexual in society, p. 4.
Recent trends in the criminal law and penal system in Norway, p. 21.
"Wrong" in the McNaghten Rules, p. 72.

Modern Law Review, Vol. 17.

The criminal degrees of knowledge, p. 294.
Jury discretion in murder trials, p. 315.
Psychiatric aspects of the report on capital punishment, p. 329.

Abolition of secrecy in the preferment of indictments, p. 336.
Polygamous marriages and English criminal law, p. 344.
Evidence—corroboration of accomplices, p. 370.
The McNaghten Rules, p. 383.

Law Times, Vol. 218.

Married Women's Property Act, 1882, s. 12: a question of compellability, p. 15.
Local government—authority to prosecute, p. 30.

Justice of the Peace, Vol. 118.

The probation service in transition, p. 434.
Motor Vehicles (Construction and Use) Regulations, 1951, reg. 101, p. 449.
Imprisonment in default of payment of a fine, p. 465.
Consecutive periods of imprisonment: another point of view, p. 481.
Surrey Quarter Sessions records of the seventeenth century, pp. 402, 418, 436, 466.
Sale of Food (Weights and Measures) Act, 1926—convicting the actual offender, p. 497.

Police Review, Vol. 62.

Assault on police on private premises, p. 544.
Contraband, p. 514.
Stating a case, p. 518.
Provisional driving licences, p. 554.

THE CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Betting and lotteries

The keepers of stalls in fair grounds where well-known fair ground games were played have recently been prosecuted under the Betting and Lotteries Act, 1853. In *R.* v. *Boleswortk, Smith and Parkin*, heard at Northampton on July 5, 1954, the defendants, who were represented, pleaded guilty to an offence under section 3 of that Act. They ran stalls from which visitors chose straws, certain of which were specifically marked, and whoever took one of these won a 6d. prize. In another case, *R.* v. *Harris*, see p. 786, below, a stall-keeper who operated a " Roll Your Penny Disc " game was found guilty of an offence under section 3. These fair ground games had previously been run with the full knowledge of the police, who co-operated in the proper running of the fair.

Representations about the Betting and Lotteries Acts have been made to the Home Secretary, who has said that the Government have been considering the recommendations of the Royal Commission on Betting, Lotteries and Gaming. Some of these have been implemented in the Pool Betting Act, 1954 (see [1954] Crim.L.R. 637), but the Government could make no statement concerning further legislation in anticipation of the Queen's speech.[1]

The Home Secretary has been advised that the conduct of a football pool by a club or charitable organisation is not in itself unlawful, but if the competition is so conducted that it is a lottery, offences against the law relating to lotteries may occur.[1] See also *Williams, Wolff, Down and Burgoyne* v. *Maynard*, p. 791, below.

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[1] H.C. Debates, Vol. 529, col. 2332, July 8, 1954.

How much crime?

The annual official answers to this question have been published in two White Papers and a Return made by the Home Secretary to an Address of the House of Commons respectively.

The Criminal Statistics for England and Wales, 1953 (Cmd. 9199) [5s. 6d.], show a reduction in the number of persons found guilty of indictable and non-indictable offences. The percentage reductions were 11·6 and 4·9 respectively. The number of indictable offences known to the police has fallen, although sexual offences have risen steeply and crimes of violence and frauds and false pretences have increased slightly. The percentage of offences cleared up has fallen from 47·5 in 1952 to 47 in 1953, as compared with 50·1 in 1938.

A decrease in the number of indictable offences in London is shown in the Report of the Commissioner of Police of the Metropolis for the Year 1953 (Cmd. 9236) [3s. 6d.]. The percentage reduction was 9·1 as compared with 1952. Here, again, offences against the person and forgery increased. The percentage of offences cleared up remained the same as for 1952, *i.e.*, 31·9.

It is interesting to note that the system of team policing, after being tried in four subdivisions of the Metropolitan Police Area, is to be extended to four more.

The Return of Offences Relating to Motor Vehicles [1s. 9d.] shows the number of offences, persons prosecuted, the results of the proceedings in magistrates' courts, and the number of alleged offences in respect of which written warnings were issued by the police, together with the number of persons concerned.

Homosexuality

The following have been appointed members of the committee which is to consider the problem of homosexuality (see [1954] Crim.L.R. 405, 575): Mr. James Adair, formerly Procurator-Fiscal at Glasgow; Mrs. Mary Cohen, chairman of the Scottish Association of Girls' Clubs; Dr. Desmond Curran, senior psychiatrist, St. George's Hospital, and civilian consultant in psychological medicine to the Royal Navy; the Rev. V. A. Demant, Regius Professor of Moral and Pastoral Theology at Oxford; Mr. Kenneth Diplock, Q.C., Recorder of Oxford and a member of the Lord Chancellor's Law Reform Committee, 1952; Sir Hugh Linstead, M.P. for Putney; Lord Lothian; Mrs. Kathleen Lovibond, chairman of Uxbridge juvenile courts; Mr. Victor Mishcon, chairman of the London County Council; Mr. Goronwy Rees, Principal of the University College of Wales at Aberystwyth; Lady Stopford, a doctor and magistrate; the Rev. R. F. V. Scott, minister since 1938 of St. Columba's (Church of Scotland), Pont Street, S.W.; Mr. W. T. Wells, M.P. for Walsall and a member of the Lord Chancellor's Committee on the Practice and Procedure of the Supreme Court, 1947–53, and of the Magistrates' Courts Rules Committee; and Dr. Joseph Whitby, a general practitioner in north London, with psychiatric experience.

Mr. W. C. Roberts, of the Home Office, has been appointed secretary of the committee, and Mr. E. J. Freeman, of the Scottish Home Department, assistant secretary.

Lord Samuel

We regret that, by a slip of the pen, in the review of " Eighteen Months " [1954] Crim.L.R. 654, Lord Samuel was referred to as " the late Lord Samuel."

Prevention of fraud

The Board of Trade has fulfilled its obligations under sections 9, 14, 15 and 16 of the Prevention of Fraud (Investments) Act, 1939, by publishing particulars of persons and firms authorised to carry on the business of dealing in securities (H.M.S.O. 1s. 9d. (1s. 10½d. post free)).

Judicial appointment

Mr. W. A. Sime has been appointed Recorder of the borough of Grantham.

Provocation and the Reasonable Man

By Glanville Williams, LL.D.
Quain Professor of Jurisprudence in the University of London

The decision of the Court of Criminal Appeal in *McCarthy* [1954] 2 W.L.R. 1044; 38 Cr.App.R. 74; [1954] Crim.L.R. 549, puts an end to a doubt that has lingered in books on criminal law. It is now clear that drunkenness as such confers no special privilege in respect of provocation.

The exact circumstances of the killing in this case were obscure, but according to the accused, the deceased had indecently assaulted him, and had followed this with an invitation to sodomy. Thereupon the accused, who had been drinking considerably, bumped the deceased's head on the road, fracturing the skull and badly injuring the face, so causing the deceased's death. The trial judge directed the jury that if the accused's story were true, the assault and invitation constituted provocation, provided that the violence used by the accused could be regarded as excusable; on the latter question it was irrelevant that the accused was the worse for drink. The jury convicted of murder, and an appeal was dismissed.

The test of the reasonable man

McCarthy is the culmination of a series of cases which introduce an objective test of a particular kind into the law of provocation. Ever since the time of East it has been clear that the test of provocation is in a sense objective as well as subjective: that is to say, it is not enough that the accused acted in a blind rage, if the case does not satisfy the requirements for provocation laid down by law. For instance, if the provocation consists of a blow, it must be a serious blow to excuse a killing. In order to distinguish between a serious and a trifling blow, judges have come to say, during the last 100 years that the provocation must be such that an "ordinary" or "reasonable" man in the position of the accused might have acted as he did. This mode of statement occasions difficulty, and it is worth pausing to examine its history.

The formulation is not found in East, who assumes that a serious unlawful blow is provocation in all circumstances as a matter of law, without any test of seriousness beyond the good sense of the court. "Any assault made with violence or circumstances of indignity upon a man's person, . . . if it be resented immediately by the death of the aggressor, and it appear that the party acted in the heat of blood upon that provocation, will reduce the crime to manslaughter": East, *P.C.* i, 233. A serious battery is "such a provocation as the law presumes might in human frailty heat the blood to a proportionate degree of resentment and keep it boiling to the moment of the fact": *Ibid.*, 238. It is true that in another place East refers to "reasonable" provocation (*Ibid.*, 232), but this seems to be only a compendious expression for the various rules of law on the subject: a lawyer will naturally regard the law as reasonable.

It is, however, an easy transition from saying that the law makes reasonable allowance for provocation to saying that the test of provocation is the behaviour of the reasonable or ordinary man. This new mode of statement seems to have been the invention of Keating J. in *Welsh* (1869) 11 Cox 336. The reasonable man was well recognised in the law of negligence, and there was a superficial attraction in allotting him a new task in the law of provocation. In the case before Keating J. the evidence of provocation was extremely weak: little more than that the accused had lost a lawsuit against the deceased, and that in a subsequent altercation the deceased put up his hand, apparently in self-defence to ward the accused off. The accused killed him with a knife. On these facts the judge might well have withdrawn the issue of provocation from the jury, or, if he left it to them, have stressed the necessity for finding a serious unlawful blow or (at least) the threat of it. What Keating J. did was to leave the issue to the jury, and to use the reaction of the hypothetical reasonable man as a test of the seriousness of the provocation. The learned judge said that "there must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man. . . . In law it is necessary that there should have been a serious provocation in order to reduce the crime to manslaughter, as, for instance, a blow, and a severe blow—something which might naturally cause an ordinary and reasonable man to lose his self-control and commit such an act."

? necessary to [illegible] the law which a may occur

Plausible as this formulation may appear, it creates a serious problem. In the law of contract and tort, and elsewhere in the criminal law, the test of the reasonable man indicates an ethical standard; but it seems absurd to say that the reasonable man will commit a felony the possible punishment for which is imprisonment for life. To say that the "ordinary" man will commit this felony is hardly less absurd. The reason why provoked homicide is punished is to deter people from committing the offence; and it is a curious confession of failure on the part of the law to suppose that, notwithstanding the possibility of heavy punishment, an ordinary person will commit it. If the assertion were correct, it would raise serious doubts whether the offence should continue to be punished. Is it necessarily this [illegible] still an ethical standard? which the accused [illegible]

Surely the true view of provocation is that it is a concession to "the frailty of human nature" in those exceptional cases where the legal prohibition fails of effect. It is a compromise, neither conceding the propriety of the act nor exacting the full penalty for it. This being so, how can it be admitted that that paragon of virtue, the reasonable man, gives way to provocation? But even reasonable precaution in civil law does not mean that the accused has all the precautions

The point can perhaps be made clearer by referring to the cases on discovering adultery. It is a rule of law that discovering a spouse in adultery affords sufficient provocation for a killing. It is submitted that this rule is not qualified by a further rule, to the effect that the discovery is provocation only if an ordinary man who finds himself in the particular circumstances would kill. In precisely the same way, it was accepted until comparatively recently that a serious blow was provocation; the "ordinary man" rule had validity only as a somewhat misleading reformulation of it. Any other interpretation would radically restrict the defence of provocation, because there are in this orderly age hardly any circumstances in which it can be asserted that an ordinary man would kill another person merely out of passion. We shall see, however, that recent cases have in fact adopted this very restricted interpretation.

Abnormal lack of self-control

The rule that there must be provocation for an ordinary man was stated in its negative form by Viscount Simon L.C. in *Mancini* [1942] A.C. 1 at 9; *cf. Kwaku Mensah* [1946] A.C. 83 at 93, P.C.; *Holmes* [1946] A.C. 588 at 597. "An unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did." Read literally, this would seem to exclude the defence almost always, for, as said before, the self-restraint of most civilised men is such that at the present day only unusually excitable or pugnacious individuals kill under stress of provocation. It is submitted that (subject to the later discussion) all that the dictum means is this, that the class of provocative acts is fixed by law, and that an unusually excitable or pugnacious individual does not get the benefit of an extended list.

To support this view, it is worth looking briefly at some of the earlier authorities. In *Alexander* (1913) 9 Cr.App.R. 139, it was held that a person who is mentally deficient is subject to the ordinary law of provocation, in the sense that matter which is outside the category of provocation for an ordinary person (*e.g.*, words) will not avail him. *Lesbini* [1914] 3 K.B. 1116, is to the same effect. In *Smith* (1914) 11 Cr.App.R. 36, a pregnant woman killed a child by hitting it over the head, on account of some act on its part which had annoyed her; her pregnant state was held irrelevant, when something done by a child of two-and-a-half years could clearly not amount to provocation in law.

The problem of justice raised by these cases belongs more to the law of insanity than to that of provocation. A person who is so mentally unbalanced that he may kill upon slight provocation needs not reduced punishment for the killing but the curative and preventive detention supplied by the law of insanity. Under the present law, which does not allow insane impulse as a defence, this special treatment can be supplied only by intervention of the Home Secretary after conviction.

The problem is more difficult where the lack of control arises from inebriety, for here the only restraining influence available to the law is the threat of punishment. In the normal person the emotional impulse released by anger is under the control, to a certain extent, of the higher brain centres, and it is just these centres that are depressed by alcohol. Hence it is common knowledge that a drunken man may be provoked to an aggressive reaction by a stimulus that would cause only slight irritation to a normal person.

Notwithstanding earlier doubts, the law is now settled by the decision in *McCarthy* that the peculiar sensitivity of the drunkard gives him no special privilege. As a matter of logic this follows inevitably from the insanity rule, for if any special circumstance is to be taken into account, it should be that of pathological state rather than of drunkenness. It may well be, however, that a humane law would pay attention to both; and in fact the Home Secretary does so.

Provocation as mitigating an intentional killing

In the foregoing discussion it was assumed that provocation is relevant even where the killing was intentional. This is the settled rule in provocation, though it was contradicted by Viscount Simon L.C. in *Holmes* [1946] A.C. 588 at 598. He appears to have denied the possibility of provocation for an intentional killing, except in the one instance of discovering a spouse in the act of adultery. This is certainly a misapprehension of the authorities, which allow provocation by a blow, if sufficiently serious, to extenuate the guilt even of an intentional killing. (See the criticism of Viscount Simon's dictum by Turner in *Russell*, Vol. i, pp. 563–72, by Landon in 65 L.Q.R. 105, and by the Royal Commission on Capital Punishment, Cmd. 8932 of 1953, para. 136.) More recently the Privy Council has reaffirmed the traditional view (*Att.-Gen. of Ceylon* v. *Kumarasinghege Don John Perera* [1953] A.C. 200), and the dictum in *Holmes* may therefore be disregarded. See, further, Edwards in 69 L.Q.R. 547.

Former rejection of the proportion rule

Another rule which has come into prominence in the recent cases is that there must be a reasonable relation between the provocation and the mortal blow given by the accused. East put it in the following words:—

"Where the punishment inflicted for a slight transgression of any sort is outrageous in its nature, either in the manner or the continuance of it, and beyond all proportion to the offence, it is rather to be considered as the effect of a brutal and diabolical malignity than of human frailty. . . . The punishment inflicted must not greatly exceed the offence received, [though] the law will not examine with the most scrupulous nicety whether he cut off the exact pound of flesh" (East, *P.C.* i, 234, 239).

This opinion was for a long time ignored by the judges. Perhaps the only adoption of it during the nineteenth century was in *Thomas* (1837) 7 C. & P. 817 at 819, where Parke B. directed the jury as follows:—

"Suppose, for instance, a blow were given, and the party struck beat the other's head to pieces by continued, cruel and repeated blows; then you could not attribute that act to the passion of anger, and the offence would be murder."

This direction emphasises the repetition of the blows, the idea apparently being that after the first blow or two the anger of the accused should have been discharged, and the subsequent blows must, in East's words, be the result of "diabolical malignity." The judge does not say that a reaction by a single blow with a deadly weapon would be ruled out. East, it is true, does attach importance to the weapon, for he says that if the accused uses a weapon likely to kill, the case must come within the strict rule of provocation; but if he uses no instrument, or only uses an instrument not of a deadly nature, in a moderate way, the case will be manslaughter although the provocation was slight (*P.C.* i, 235–8). The relevance of the second part of this proposition disappears as soon as it is realised that a man who unintentionally kills as the result of a moderate blow can never be guilty of more than manslaughter, whether there is provocation or not. The legal issue of provocation arises only if the accused intended to kill or to do great bodily harm, for only then has he the requisite mental element for murder. (The exceptional rules for felony-murder and arrest-murder need not be considered.) East admits that if the case does come within the strict rule of provocation (as where the provocation takes the form of a serious blow), the accused will be acquitted of murder even though he retaliated with a weapon likely to kill.

This opinion is borne out by all the cases of the nineteenth century, and by several in the twentieth. A good example of the liberality with which the law of provocation was formerly administered is supplied by *Ayes* (1810) R. & R. 166. There, a quarrel arose between some French prisoners, because one of them, the deceased, was detected in theft; the accused went up to him and with both his hands pushed against him with great force, and threw him to the ground. The deceased arose and struck the accused two or three times with his fist in the face, and one blow on the eye. Then the accused, being very drunk, pushed the deceased in the same manner a second time on the ground, and gave him as he lay on his back two or three stamps with great force with his foot on the stomach and belly; this resulted in the deceased's death. Graham B. directed the jury correctly on the subject of provocation, mentioning that the drunkenness was no extenuation. The jury convicted of murder, but the judge respited sentence for the opinion of the judges. All the judges were of opinion that the conviction was wrong, the act being only manslaughter.

One would hesitate to say that the ordinary Englishman would, in 1811, retaliate for blows in the face by pushing the other over and stamping with great force on his stomach. Drunkenness apart, this is the conduct of a violent brute, not of a person with ordinary civilised self-restraint. It is evident that at this date any severe blow was provocation in law if the killing followed immediately, in hot blood and there were no limiting rules. As Hannen J. said: " It must not be a light provocation; it must be a grave provocation; and undoubtedly a blow is regarded by the law as such a grave provocation " (*Selten* (1871) 11 Cox 674).

The same rule is witnessed by several cases in which defeat in fisticuffs has been allowed as provocation where the loser at the time or afterwards stabbed his unarmed opponent with a knife or other weapon: *Snow* (1776) 1 Leach 151; *Rankin* (1803) R. & R. 43; *Smith* (1837) 8 C. & P. 160. In *Eagle* (1862) 2 F. & F. 827, P gave D several blows; D opened his clasp knife and stabbed P; this was held to be on provocation, and there was no talk of reasonable relationship. In *Hall* (1928) 21 Cr.App.R. 48, the accused stabbed to revenge himself for blows (according to his story he had been attacked by a crowd and kicked on the head); the Court of Criminal Appeal reduced a sentence of murder to one of manslaughter, the jury not having been directed on the issue of provocation. As late as *Cobbett* (1940) 28 Cr.App.R. 11, where the accused, a half-wit, used a knife in reply to a truncheon, he had his conviction of murder reduced to manslaughter.

Most people would fail to see a reasonable relationship in any of these cases. There is nothing more " un-English " than to kick a man when he is down, or to draw a knife in unarmed combat; so that it can hardly be said in any of them that the accused behaved like an " ordinary " (still less a " reasonable ") man. Yet it is submitted that they were all rightly decided, under the law as it was then understood. The question was not whether the conduct of the accused was repugnant to ordinary citizens, for if he behaved vilely and treacherously the resources of the law of manslaughter were sufficient to punish him. It was rightly seen that the true question was as to the proper limits of capital punishment, and, perversely as that question used to be answered in English law, in respect of felonies generally, judicial opinion was clear that a killing in heat of blood did not deserve the supreme penalty.

Physical peculiarities and provocation

Just as mental peculiarities do not give a privileged position in the law of provocation, so neither do physical peculiarities. This was decided by the House of Lords in *Bedder* [1954] 1 W.L.R. 1119; [1954] Crim.L.R. 721. The appellant was a youth of eighteen who was sexually impotent but who attempted to have sexual intercourse with a prostitute. Discovering his impotence she jeered at him and attempted to get away; he tried still to hold her, but (according to his evidence) she slapped him in the face, punched him in the stomach, and (when he pushed her back) kicked him in the private parts. The appellant thereupon stabbed her twice with a pocket knife, causing her death. The judge directed the jury in terms of what the reasonable or ordinary person would have done, and an appeal against a conviction of murder was dismissed both by the Court of Criminal Appeal and by the House of Lords. If the provocation was insufficient for a normal man, it could not help the accused that he was conscious of his impotence and therefore liable to be more excited if "twitted" or attacked on the subject of that particular infirmity. In applying the test of the reasonable man, it could not be supposed that this hypothetical reasonable man in the position of the accused was himself impotent.

Present status of the proportion rule

It seems that a radical change of opinion has occurred since the judgments of the House of Lords in *Mancini* [1942] A.C. at 9, and *Holmes* [1946] A.C. at 599. In both these cases, Viscount Simon L.C., speaking for the House as a whole, decisively restated the rule of reasonable relationship. In *Mancini*, he declared that one had "to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger." It may be noticed that if indeed the accused had retorted only with a simple blow, a resulting death could not in any event have been more than manslaughter, and no legal question of provocation could have arisen (except on the question of punishment). Provocation arises on the issue of responsibility only if the accused intended to kill or do great bodily harm; and if he intended to kill, it is a little difficult to see why importance should be attached to the mode of killing, provided of course that the killing was in hot blood. It may well be that this dictum of Viscount Simon was related to his opinion that provocation was never a palliation for an intentional killing as a result of a blow; but, as has been shown, this opinion was erroneous.

There is one interpretation of the requirement of reasonable relationship that avoids these difficulties. The accused may not have intended to kill, but he may have intended to do grave bodily harm. Such an intention is malice aforethought in the law of murder, and the question of provocation to lower the crime to manslaughter therefore arises. Now it is intelligible that if only a blow of a certain seriousness is sufficient provocation where the accused intended to kill, a blow of some slightly less degree of seriousness may be provocation where the accused did not intend to kill but only intended grave bodily harm. The " reasonable relationship " rule, therefore, introduces a kind of sliding scale into the law of provocation, where the accused intended grave bodily harm short of death. If he intended to kill, there seems to be no point in applying the rule, for a man who in the heat of passion tries to kill will do so with anything that comes to hand, and there is no point in distinguishing between weapons.

Although the rule may sound well on paper, it is difficult to explain to juries without introducing considerable complexity, and one may doubt whether it has sufficient practical utility to justify its retention in the law. Until lately juries were rarely directed in terms of the rule. But judges have increasingly referred to the rule of reasonable relationship when directing juries in recent years, and it has probably played its part in securing the rejection of the defence of provocation in an increasing number of cases.

Not only may the rule be used in directing juries, but it may also, apparently, be used to withdraw the issue of provocation from the jury. This appears from *Mancini*, where the facts were that D was the manager of a club who wished to exclude O from it. He seized O by the neck or top of the coat; P went to O's aid, seized D's shoulder or arm, and aimed a blow at him. D whipped out a dagger and inflicted a fatal wound on P. The jury, though directed on provocation, returned a verdict of murder. It was held by the House of Lords that the judge's direction was adequate, but in addition it seems to have been the opinion of their Lordships that on the facts no direction on provocation was necessary. Viscount

Simon said: " In my opinion, moreover, there was no sufficient evidence to justify a verdict of manslaughter arising from the use of the dagger." The remark is not very clear, for a statement that there is no sufficient evidence to justify a particular verdict is not the same as saying that there is no sufficient evidence to justify the question being left to the jury, and it was the latter question that was before the House. A more explicit statement occurred earlier in the speech, when Viscount Simon said that the fact that P aimed a blow with his hand or fist " did not constitute provocation of a kind which could extenuate the sudden introduction and use of a lethal weapon like this dagger, and there was, therefore, . . . no adequate material to raise the issue of provocation." This plainly means that the issue should not have been left to the jury, but it can perhaps be explained on the comparatively narrow ground that the blow aimed at D had not taken effect. If D had in fact been severely struck, this should, on the older authorities, have been evidence of provocation sufficient to palliate even the use of a knife.

It may be, of course, that these older authorities are no longer law, and that the use of a knife or any other " unsportsmanlike " retaliation will now be murder notwithstanding the existence of provocation. Or it may be that the law of provocation has now been reduced to something like the *lex talionis*, requiring an equality between the injury and the vengeance. If the accused intended to kill, this is palliated only if he was himself the victim of a murderous attack (apart from the case of adultery); if he intended to do great bodily harm, he must have been the victim of a similar intent. Thus Devlin J. said in *Duffy* [1949] 1 All E.R. 932n.: " Fists might be answered with fists, but not with a deadly weapon." An equation of this kind may have been in the mind of the court in *McCarthy*, the case mentioned at the beginning of this article. Both the trial judge and, it seems, the Court of Criminal Appeal were prepared to accept that the indecent assault and invitation constituted provocation; but it was held that the jury could still find on the facts that the reaction of the accused bore no reasonable relation to the provocation. Lord Goddard C.J. said : " While this provocation would no doubt have excused (when we say " excused " we mean enough to reduce the killing to manslaughter) a blow, perhaps more than one, it could not have justified the infliction of such injuries as to cause three or four fractures of the skull and the beating of the man's head on a stony road." This remark, and also that of Devlin J. just quoted, is open to the same comment as Viscount Simon's: if the accused had limited himself to one blow with his fist, the legal issue of provocation would not have arisen, for the case could not have been more than manslaughter in any event. Hence, if it be admitted that there was provocation in law, there must have been something that would have palliated at least the intentional infliction of great bodily harm, which harm resulted in death. Otherwise there is no point in saying that there was provocation. But what did the accused in *McCarthy* intend to do, except to inflict great bodily harm, which harm resulted in death?

The change that has come over the administration of the law may be illustrated by comparing *McCarthy* with *Prince* (1941) 28 Cr.App.R. 60, 140. The provocation in the two cases was much the same, but in the earlier cases the "reasonable relationship" rule was not applied, whereas in the later one it was. The case of *Bedder*, discussed above at p. 747, is a still more striking illustration. There, the judges refused to hold that even a kick in the genitals constituted provocation where the accused had killed by stabbing, the jury having on such facts convicted of murder.

The present trend of judicial opinion suggests that it may now be dangerous for the accused on the issue of provocation to give evidence that he was drunk, or that he was of unsound mind. If he suppresses this evidence, the judge may perhaps leave the case to the jury in old-fashioned terms, merely asking whether he received provocation by a serious blow. But if evidence of abnormality is introduced, the judge is likely to emphasise that the accused cannot be "justified" unless a reasonable man could have done what he did (see *Holmes* [1946] A.C. 588 at 599). It is difficult to see how this test, intelligently understood and applied, can ever give an acquittal of murder. The verb "justify" (which was used again in the direction to the jury in *Bedder*, above) seems to be unfortunate, because it is never the law that provocation justifies the act. To say, as did the judge in *Bedder*, that "the provocation must be such as would reasonably *justify* the violence used," gives a somewhat misleading impression of the legal issue. A better word would be "palliate" or "mitigate."

Drunkenness and causal connection

Whether or not it is to the advantage of the accused to introduce evidence of drunkenness, such evidence is certainly admissible. It may show that when he struck the blow he did not intend to kill or inflict great bodily harm; and on the issue of provocation the evidence is admissible to show that the accused's act was attributable to the passion of anger excited by the provocation. The last point needs a word of explanation. Although provocation is governed by an objective test, it is at the same time governed by a subjective test, *viz.*, did the accused act under the provocation or not? It is not enough that an ordinary man would have been provoked, if the accused had unusual control over his passions. In an American case where the slayer tried to make a telephone call in the interim, this was held to show that the killing was not in the heat of passion, even though the cooling time would not have been sufficient for an ordinary person (*State* v. *Delbrono* (1924) 306 Mo. 553; 268 S.W. 60). Thus the two questions to be addressed to the jury, as formulated by Viscount Simon L.C., are: (1) " Do you consider that, on the facts as you find them from the evidence, the provocation was in fact enough to lead a reasonable person to do what the accused did? " and if so (2) " Did the accused act under the stress of such provocation? " (*Holmes* [1946] A.C. at 597; *cf. Mancini* [1942] A.C. at 9; *Kwaku Mensah* [1946] A.C. at 93, P.C.). Evidence of drunkenness is obviously relevant to the second question, but in practice the second question rarely raises a serious issue, because all the argument is upon the first.

A curious error of reasoning seems to have been committed by some judges in supporting the reasonable-man test. In *Lesbini* [1914] 3 K.B. 1116, Avory J., in support of the rule that mental unbalance was irrelevant, said that if the law were otherwise a bad-tempered man would be entitled to a verdict of manslaughter where a good-tempered one would be liable to be convicted of murder. Other judges supported the reasonable-man test before the Royal Commission on Capital Punishment for the same reason, and with some hesitation the Commission accepted the argument (Cmd. 8932, paras. 139–45). However, reflection will perhaps show that the argument is mistaken. Even under the law as it stands, a bad-tempered man may be entitled to be acquitted of murder where a good-tempered one may be liable to be convicted. This is because of Viscount Simon's second question, which attaches importance to the particular temperament of the accused. Ever since the time of East the legal requirement has been that the accused should have acted in the heat of passion or in blind rage; and the question whether he acted in this way or with cool calculation is one of fact. This rule, which has never been questioned, does, therefore, discriminate between good-tempered and bad-tempered men, to the advantage of the latter. The only way of removing from the law the privilege given by bad temper would be by abolishing the law of provocation; for good-tempered men are never provoked to kill. The good-tempered man may, of course, kill from a motive of gain or other profit, but by definition he does not kill from bad temper, which is the only sort of killing with which provocation deals.

Provocation and mistake

Another way in which drunkenness may be relevant is in connection with mistake.

There seems to be no doubt that a mistaken belief in provocation is equivalent to actual provocation. The mistake is a defence to the same extent as if the facts supposed were true. Thus in *Brown* (1776) Leach 148, the killing of one mistakenly thought to belong to a provoking mob was held to be manslaughter only. Similarly in an American case, a husband who found his wife in the embrace of another and mistakenly concluded that adultery had taken place was allowed to rely on the defence of provocation (*State* v. *Yanz* (1901) 74 Conn. 177).

It is further submitted that there is no "objective" test in respect of the mistake; in other words, the mistake need not be reasonable. As a general principle in criminal matters, a mistake entitles the accused to be treated on the basis that the facts he supposed existed, whether the mistake was reasonable or not; negligence is not generally a question in issue in criminal law. This is not a denial of the objective test of provocation, for the objective test operates only on the facts as they were believed by the accused to exist. The question asked by the objective test is whether, assuming the facts to be as the accused believed them to be, those facts would come within the legal categories of provocation, or would be provocation for an ordinary man. What the objective test discountenances is unusual deficiency of self-control, not the making of an error of observation or inference in point of fact.

The chief practical importance of this is in connection with drunkenness, for a person under the influence of drink is particularly prone to mistake the intentions of another. (An extraordinary instance is that of Booth the actor—the brother of Lincoln's assassin—who on one occasion when he was playing Macbeth under the influence of liquor, refused to be killed, and chased Macduff murderously all through the stalls.) If the drunkard acts in supposed self-defence, he is entitled (on a charge involving intention or recklessness) to have the facts taken as he supposed them to be, however unreasonable the mistake; and if he acts under supposed provocation, the rule is the same.

The chief authority is *Letenock* (1917) 12 Cr.App.R. 221. There, the charge against the accused was of murdering his corporal. The evidence for the defence was that the corporal had adopted a violent and provocative attitude towards the accused, who was drunk at the time, and that the accused in his drunken state misapprehended the corporal's intention and expected some attack. The accused had killed the corporal by stabbing him in several places. The trial judge directed the jury to the effect that drunkenness was no answer, and the jury convicted of murder. On appeal it was held that there had been a misdirection. The jury should have been told that if the corporal approached the accused in a rough manner, from which the accused might infer that he was about to deal him a blow, they might convict of manslaughter. "The only element of doubt in the case is whether or not there was anything which might have caused the applicant, in his drunken condition, to believe that he was going to be struck." In view of this doubt the court replaced the verdict with one of manslaughter.

Although *Letenock* is still good law on the issue of mistake of fact, it might be decided differently today on the ground that what the accused did was disproportionate to the supposed provocation. This point was not considered in the judgment, and the headnote is misleading on it.

The rule in *Letenock* is that although no battery was intended by the deceased, and although a sober person would not have supposed that a battery was intended, yet there is provocation if the drunkard supposed that a (sufficiently serious) battery was intended. The practical application of this rule may occasion some difficulty. It involves an inquiry into what exactly the accused feared; but the accused may not remember when sober what he thought when drunk; or in his drunken state he may not have thought anything clearly enough to assist in solving the problem. Thus it may be impossible to determine whether the accused expected a slight or serious battery; and consequently it may be impossible to determine whether what he did bore a reasonable relation to what he feared. This is not a conclusive objection to the rule, because the same difficulties are found in the law of self-defence and insanity, and have to be faced by the law. If the difficulty should in any particular case prove insuperable, the issue must be decided against the Crown, on whom lies the burden of proof.

A Visit to Detention Centres

By Jean Graham Hall, ll.m., *Barrister-at-Law*

Two detention centres are now in existence. Campsfield House, Kidlington, Oxford, was opened on August 25, 1952, as a junior centre for boys aged 14 and under 17 years. Blantyre House, Goudhurst, Kent, was opened on April 1, 1954, as a senior centre for young men aged 17 and under 21 years.

Since its opening 440 boys have passed through Campsfield House, while 120 young men have entered Blantyre House and 66 had been discharged by the end of August, 1954.

Both centres contain persons sentenced for a medley of offences. The majority, as one might expect, are larceny and breaking and entering. Assault, offences with an element of hooliganism, and even refusal to comply with National Service Acts, also have earned a sentence of detention.

High wire fences marking a wide perimeter round well-kept garden borders and neat buildings compel a visitor to recollect the aim of detention centres. It is to give a sharp reminder of the need to conform to conventional ways of society by ceasing to commit crime.

The standard of both buildings is high, and equipment is noticeably good. Blantyre House was formerly an agricultural and charitable institution, while Campsfield House was built as a casual ward. Both have been converted to their present purpose and have plenty of outbuildings, with a sufficient amount of space—although this seemed more plentiful at Campsfield House. Prefabricated houses for the staff lie outside the wire perimeter.

Long days—6.30 a.m. to 9.30 p.m.—are constantly and strictly supervised, with emphasis on character training activities: vocational training is not attempted. There are pleasant class and craft rooms. Meals are served in a dining room with four boys to each table. Good manners are demanded, and there is a high premium upon cleanliness and personal standards. Adequate showers, toilets and changing rooms are available. Beside each bed in the dormitories is a chest of drawers fitted with hanging space for clothes, and the progress is from individual cubicles on arrival to communal sleeping.

Deterrence is the keynote; but there is little doubt of the kindly interest in each person, as an individual, displayed by the wardens and their staffs at both centres. An attempt is made to kindle the interest of the men and boys in educational facilities and basic religious faith.

Full-time education is compulsory, during the statutory school term, for those under school-leaving age. Attendance at evening classes, which are carried on with the co-operation of the local education authorities, is required of those over school age. With comparatively small groups, opportunities for individual tuition thus exist.

The chaplain, the Roman Catholic priest and the Methodist minister visit regularly, and each takes a class with those of his particular faith. These evening sessions may vary between straightforward instruction and discussion, and are an endeavour to meet the needs of the great majority of those at the centres who have never attended a religious service and are ignorant of religious teaching.

A normal working week consists of 44 hours. Apart from the necessary domestic chores of the centres, the majority of activities take place out of doors. Continuous work on outbuildings, and levelling and development of the grounds, provide plenty of hard work, mostly of a gardening and labouring variety. Tending of lawns and the attractive flower beds surrounding the main buildings supplies further activity.

At least one hour a day must be devoted to physical training or organised games. These are hard and strenuous, to provide the maximum amount of exercise. Such period each day is part of the normal working week. Campsfield House has a well equipped gymnasium in one of its outbuildings. Blantyre House has an excellent swimming pool.

Length of sentence

Section 18 (1) of the Criminal Justice Act, 1948, lays down that the length of sentence at a detention centre shall be three months. However, the proviso relates the maximum sentence to that which the court could impose on an adult prisoner for the given offence, and relates also to special circumstances in which a longer sentence would be beneficial. Variation of sentence may in fact be between one and six months.

Eighty per cent. of those of both detention centres are serving a term of three months' detention. Bearing in mind the kind of discipline imposed, this would seem to be the optimum period.

The Detention Centre Rules, 1952 (S.I. 1952, No. 1432) enumerate the conditions relating to remission of sentence. In the case of good behaviour this amounts to one-sixth. The sentence served in the majority of cases is actually ten weeks.

Sentencing policy

A heavy onus rests on all courts to award correctly a sentence in a detention centre. The wording of the Act is mandatory, and consideration must first be given to every other method, except imprisonment, by which the court might deal with the guilty person.

What should be the guiding principles? If the person needs long-term training, followed by supervision, then an approved school or Borstal training would be preferable. Should the person demonstrate a genuine and persevering desire to turn over a new leaf, obviously probation might be tried. A young man in need of much supporting guidance to overcome his character or environmental difficulties could not, I submit, benefit from the strict discipline of a detention centre. In my opinion, where the offender has a fairly good background, but needs a lesson to bring home to him the gravity of his situation, then this particular type of sentence might be beneficial.

There is some controversy as to whether approved school boys should be sentenced to detention when coming before the court on a further occasion. Figures relating to the first year at Campsfield House show that of boys with no previous institutional experience, 12 per cent. failed after a sentence of detention. For boys with previous institutional experience, at approved schools, the percentage of failure was 53·7 per cent.

The lesson is likely to be sharper if the detention centre is the first taste of institutional treatment. The failures at Borstal are frequently also ex-approved-school boys who, on account of their previous experience, know all the answers and allow the régime to pass over them with little impact. If a detention centre can halt even half of the ex-approved-school boys in its care from the sad "Mark Benney"[1] trail along the road to ultimate long sentences of imprisonment, then perhaps its contribution should not be lightly dismissed.

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[1] Mark Benney, *Low Company*, published by Peter Davies.

Remands

While great care is assuredly taken concerning the health of all those detained, obviously medical fitness for the sentence is imperative. A court may order a remand in custody to ascertain this fitness. A 14–17 year-old boy would be sent to a remand home, which is primarily a place of safety and, because of its nature and purpose, not an institution demanding strict discipline. Until the time when observation centres are set up, the remand for the 17–21 year-old young man must be to prison. Since the purpose of detention centres is to keep young people out of prison, the remand defeats the underlying purpose of the Act.

The dilemma of the court is whether or not to make a detention order without exact knowledge as to the offender's physical capacity. One solution is, on a finding of guilt, to put the offender back for a medical examination made within the precincts of the court.

After-care

The Criminal Justice Act makes no provision for compulsory after-care of those who have served a term in a detention centre. This is a curious omission in an Act which extends after-care into fields where it had not previously been used.

The Rules state that it shall be the duty of the Board of Visitors to make such arrangements as are practicable for the after-care of the inmates of the centre who are willing to co-operate. In practice, before a boy is discharged, the warden talks with him concerning future plans, and if the boy expresses willingness, the aid of a probation officer is sought. Some of the 17–21 age group apparently appreciate that such help is worth seeking and are willing to approach a probation officer for advice. However, the younger group, many of whom, like the older ones, have already been on probation at least once, prefer to "go it alone." While other willing officials, *e.g.*, youth employment officers, can fill a need by assisting a boy to find a job on discharge, one may contrast with this the stringent licence and after-care of those sentenced to approved schools and Borstals, with their added provision of legal sanctions, involving recall. Rehabilitation after the sharp discipline of a detention centre is vital, and one cannot visualise its completeness without efficient and certain after-care.

Where two offences are proved, a court can align a probation order with the detention order, and compulsory after-care naturally follows in this case. Of course, the offender must give his consent to the probation order at the time it is made.

Duplicating the pattern

Blantyre House and Campsfield House serve only some south-eastern counties of England, and no similar facilities exist outside this area. The Prison Commissioners have schemes afoot for two other centres, and they plan to open Foston Hall, Derby, in the autumn of 1955.

The Act also refers to females. It is difficult to imagine a detention centre for girls or young women on the pattern now existent. Reliance on toughness, constant activity and a semi-military régime would be difficult to promote in a feminine atmosphere. The argument that some women easily adapt themselves to Service life does not suffice. The women and girls who come before the courts are generally in need of specifically individual treatment, and I hesitate to predict much success in dealing with them at detention centres.

Prison Commissioners

It is interesting to note, in relation to the 14–17's, that detention centres come within the orbit of the Prison Commissioners. Other institutional training for this age group (apart from the small number sentenced to imprisonment by courts of record; and Borstal in relation to over 16's) is within the scope of the Children's Department of the Home Office, local authorities or voluntary societies.

This extension of work to a younger age group evinces no evidence of lack of imagination on the part of the Prison Commissioners in dealing with adolescents. Liaison is maintained with the Children's Department through their inspectors, and with the Ministry of Education concerning those boys under school-leaving age.

Conclusion

Ten weeks is a short while in which to attempt a radical change of a way of life. Well-chosen by the courts, well-used in practice, detention centres are another weapon in the sentencing armoury of the courts. The right person for a sentence of detention must be carefully sought, for a short sharp shock is not the appropriate treatment to be administered to every offender.

An Australian Letter

Melbourne,
August, 1954.

Sedition, under Australian legislation, is an elusive and imprecisely-defined crime. Perhaps, after the Petrov Inquiry, there will be a series of trials which may lessen the obscurity. At present, however, the Royal Commission appointed to inquire into espionage activities in Australia has been careful to keep from the public any personal or factual details which might form the basis of such charges and has produced in its public sessions in Canberra, Sydney and Melbourne little more than biographical histories of the two principal performers, Mr. and Mrs. Petrov, and some confirmation of the generally well-understood pro-Russian activities of certain leading local communists.

When, shortly before the general election, the Government revealed the defection from the Russian Embassy of Petrov and announced its intention to appoint a Royal Commission, several Federal Ministers expressly adverted to the possibility of subsequent criminal prosecutions. Why the Commission had to precede the prosecutions is not yet clear.

Appeals on Law by the Crown

In *Regina* v. *S.* (1953 S.R.(N.S.W.) 460) the New South Wales Court of Criminal Appeal (Street C.J., Owen and Heron JJ.), considered points of law raised for their decision under a novel appellate procedure introduced in 1951 by the Crimes (Amendment) Act, and now appearing as section 5A (2) of the Criminal Appeal Act, 1912.

The 1951 amendment varied the rule that once an accused person has been acquitted by a jury no further proceedings can take place in which he could be concerned in relation to that charge. The principle behind that rule is, however, preserved by the express provision in the New South Wales Act that whatever the determination of the appellate court, the accused's acquittal by the jury shall in no wise be invalidated: he remains immune from conviction. Despite this immunity, he is entitled to representation on the appeal and provision is made for the reasonable costs of such representation to be borne by the Crown.

It is an imaginative and potentially valuable procedure. It could aid the development of the criminal law by ensuring that exculpating rules of law shall be precisely defined and thus merits the attention of legislatures in other jurisdictions in the Anglo-American legal system.

In terms, section 5A provides that " The Judge or a Chairman of Quarter Sessions before whom any person is tried and acquitted shall, if so requested by counsel for the Crown upon or after the conclusion of the trial, reserve for decision by the Court of Criminal Appeal any question of law arising at or in connection with the trial." The written consent of the Attorney-General must be obtained before such request is made to the trial judge. Given such consent the question of law is to be referred to the Court of Criminal Appeal together with a statement by the trial judge of the circumstances out of which it arose, or such further statement as the Court of Criminal Appeal may require. Finally, it is provided that argument on any questions so submitted shall be heard *in camera*, and that the name of the person acquitted is not to be disclosed outside the court—hence the title of this case. The procedure is expressly confined to questions of law.

One point at issue in *Regina* v. *S.* was whether a delay of three months between the conclusion of the trial and the application to the trial judge under section 5A (2) could be regarded as being made " upon or after the conclusion of the trial." In that the Attorney-General's consent is a prerequisite, " upon " cannot here be interpreted as requiring an immediate application. Similarly, " after " would not appear to involve any temporal limitation. Nevertheless, by analogy with the accused's two rights of appeal which are limited to ten days in one instance and twenty-one in another (though capable of extension in the discretion of the appellate court) the Court of Criminal Appeal firmly expressed their belief that a three months' delay was altogether unreasonable.

Despite this finding, owing to this being the first instance in which the new procedure was applied, the matter was allowed to proceed and other issues of substance considered which do not, however, merit note in this letter. When the court is interested in the development of the law, and not in the issue between the Crown and the accused, this somewhat unusual method of applying the product of a restrictive statutory interpretation may well be justified.

"Ex turpi" and the Crown

In *Regina* v. *B.* (1953 S.R.(N.S.W.) 497) a substantial point of law illustrating the value of the new appellate procedure was reserved for the Court of Criminal Appeal. The same 1951 Crimes (Amendment) Act which introduced this type of appeal also provided by section 2 (*m*) that "whosoever, by any false pretence, or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, obtains from any person any property, with intent to defraud, shall be liable to penal servitude for five years." This section, which has recently been copied by the Victorian legislature—Crimes Act, 1954, s. 2—is designed to fill the gap in the criminal law previous existing when some villain persuaded the owner to part with property in his chattels (hence no larceny) by means of false promises (not being pretences as to existing facts, hence no obtaining by false pretences).

In the instant case, however, a point of law of general interest on which only analogously relevant authority from the United States of America could be found, and none from England or Australia, was at issue. The accused wilfully falsely promised in return for a bribe to obtain priority in obtaining a house for the promisee from the State Housing Commission. The promisee had thus himself engaged in an illegal endeavour and the principle *ex turpi causa non oritur actio* would prevent his bringing a civil suit. The trial judge directed the jury that if the promisee knew he was entering into an illegal transaction the accused could not be convicted of the offence charged. In other words, he applied the maxim *ex turpi* to a criminal issue and bound the Crown by the victim's villainy. The Court of Criminal Appeal held that the Crown was not so bound and found that the trial judge was here in error. Owen J. dissented, regarding the section as not designed to apply to an unlawful promise, but only to a lawful promise not intended to be fulfilled, the former already being covered by the offence of larceny in that property cannot pass pursuant to an unlawful agreement which is by definition void *ab initio*. He agreed with the majority, however, that the maxim *ex turpi* can have no application to a criminal offence.

It is clear enough that the Crown had done no wrong on the facts in *Regina* v. *B.* and that, as the purpose of criminal sanctions is punitive and not protective, aimed at the enforcement of the community's standards of conduct and not the compensation of gullible villains, the maxim *ex turpi* should not here apply. However, this is apparently the first English or Australian decision squarely on this point.

As comment it may be argued that the total exclusion of this maxim from the ambit of the criminal law may in the long run prove to be either ill-considered or inaccurate. The position of the police *agent-provocateur* has been too rarely considered judicially for the *ex turpi* doctrine to be confidently totally excluded.

The Burden of Proof in Bigamy

In *Broughton* (1953 Victorian Law Reports 572), the Full Court of the Victorian Supreme Court (Lowe A.-C.J., Gavan Duffy and Barry JJ.), decided an important and unsettled issue concerning the burden of proof in bigamy. The definition of bigamy in the Victorian Crimes Act, 1928, is based on the English Offences against the Person Act, 1861, s. 57, and like it, allows a defence if the accused's spouse had for the seven years prior to the second ceremony been continually absent and had not been known by the accused to be living within that time.

At Broughton's trial the jury were directed that although the burden of proving the accused's knowledge of his first spouse's continued existence lay on the Crown—*Curgerwen* ((1865) L.R. 1 C.C.R. 1) made this certain—the burden of proving absence for seven years lay on the accused, and that he was bound to establish this on the balance of probability. Broughton was convicted. On appeal, based mainly on an attack on this direction, the conviction was quashed and a retrial ordered.

Lowe A.-C.J. and Barry J., in a joint judgment, placed the ultimate burden of proof on the prosecution, holding that the Crown must, to obtain a conviction, either disprove seven years' continuous absence or establish the accused's knowledge during that period of the first spouse's continued existence. Gavan Duffy J. dissented, holding that the accused, if he is to escape conviction, must establish the seven years' absence on the balance of probability.

It is remarkable how this issue is skirted in the major texts. It is avoided completely in Archbold, Roscoe, Russell, Halsbury, and Harris and Wilshere; carefully left undecided by Wigmore; and only mentioned inferentially in Stephen's *Digest*, Kenny and Cross and Jones. These latter lend support to the dissenting judgment in *Broughton*. Only Professor Glanville Williams, among the leading commentators, would appear to agree with the majority in *Broughton* (see *Criminal Law: The General Part*, § 231).

Nor is there much guidance in the reported cases.

In the result it is submitted that, once a clear distinction is drawn between the evidentiary burden of adducing evidence at a particular stage of the trial and the ultimate burden of establishing guilt or innocence, the majority judgment is to be preferred. It well accords with the rule in *Woolmington* ([1935] A.C. 462) and avoids the inconvenience of endeavouring to instruct a jury that one limb of a defence—the knowledge of the spouse's existence—must be disproved beyond reasonable doubt by the Crown, while the other—the issue of absence—must be proved on the balance of probabilities by the defence. Surely it is a single defence which contains two co-existing elements, absence and lack of knowledge, and once genuinely raised as an issue by the defence should require the accused's acquittal if the jury have any doubt of its falsity.

Infanticide and Presentment

The English Infanticide Act has been copied in New South Wales and Victoria. The Victorian legislature adopted it by section 4 of the Crimes Act, 1949. In *The Queen* v. *Hutty* (1953 Victorian Law Reports 338) the first presentment under which this offence was relevant was heard before Barry J. of the Supreme Court.

The nineteen-year-old Miss Hutty was charged with the murder of her newly born infant, the child having died of head injuries inflicted on it within twenty minutes of birth. It was alleged by the prosecution, though denied by the defence, that she had struck the infant several times on the head with her shoe.

Barry J. directed the jury to acquit the prisoner of murder and to consider only whether she was guilty of manslaughter or infanticide. In the course of his direction he expressed the opinion that, in similar circumstances, the Crown Law Department (which conducts the prosecutions in Victoria) should not present the accused upon a charge of murder but should confine the charge to one of infanticide.

The statute expressly allows the Crown this choice of presentments. It also gives the court the discretion to determine whether the two conditions for this offence are met—that the child was under the age of twelve months at the time of the felonious act, and that at this time the balance of the accused's mind was disturbed by reason of the effects of parturition or lactation. Whenever the death closely follows the birth and the facts reveal an absence of premeditation, it is the view of Barry J. that the Crown should present only upon the charge of infanticide.

The sympathy of juries and of most people for mothers in these circumstances, and their disinclination to regard such killings as murder, was the force that led to the creation of this offence. In this difficult area of social control the law does well to avoid where possible the sledge-hammer of the charge of murder when that of infanticide allows ample scope for the infliction of the punishment appropriate to the widely varying circumstances of this offence.

In the event, in *Hutty* the jury returned a verdict of not guilty of murder, not guilty of manslaughter, and not guilty of infanticide—on the facts a logically difficult but emotionally understandable result.

Accomplices and Constructive Murder

The conviction and hanging of the nineteen-year-old Bentley for the killing by his younger accomplice Craig of Police Constable Miles excited considerable controversy in Australia, particularly with regard to the evidence of joint enterprise accepted as sufficient by the English courts. Recently, in Victoria, Barry J. of the Supreme Court, gave a direction in a case of somewhat similar circumstances which led to the acquittal of the accomplice who did not effect the killing.

Two immigrants, Socratous and Yiannakou, who being other than English immigrants were headlined as "New Australians" (English immigrants are accepted without a special stigma-attracting label), embarked upon a burglarious enterprise, directed at the traditionally "Old Australian" Melbourne Golf Club, in the course of which the night-watchman at the club was killed. Socratous planned the burglary, sought Yiannakou's assistance, and equipped himself with a hammer. In Yiannakou's presence, Socratous struck the night-watchman several blows with the hammer and killed him.

The jury acquitted Yiannakou of murder pursuant to a direction by the trial judge in which the issue of common felonious design sufficient for a conviction of murder was put much more restrictively than by Lord Goddard C.J. in *Bentley*. Barry J. said: "But you should not convict

Yiannakou merely because you are satisfied that he was a party to a plot to steal from the golf club. The Crown has got to do more than that. The Crown has got to establish to your satisfaction beyond reasonable doubt that Yiannakou was party to an agreement or an arrangement whereby the stealing was to be carried through at all hazards. It has got to establish to your satisfaction that it was understood either expressly or implicitly by Socratous and Yiannakou that if anybody sought to prevent them from carrying their purpose into effect he would be dealt with by violent measures." [1]

A direction in such terms strongly reinforces the jury's reluctance to convict of murder anyone other than the actual killer. Whether one agrees or disagrees with this approach is more a matter of temperament than of criminological understanding; but in Victoria it gains considerable support from the party political division on the issue of capital punishment—the Liberal and Country Parties hang occasionally, the Labour Party, which is now in office, does not. Few are as interested in impending elections as convicted murderers. Their minds are wonderfully concentrated on the political climate.

Yiannakou is, at all events, now dead to Australia, having been deported.

NORVAL MORRIS.

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[1] See also *R.* v. *Grant and Gilbert* [1954] Crim.L.R. 624, where the Court of Criminal Appeal held on similar facts that the two accused, having embarked on the felony of stealing from a dwelling-house with the intention of using violence to a porter if necessary, were rightly convicted of murder.—ED.

New Vehicle Lighting Rules

By E. H. LAUGHTON-SCOTT, B.A., *Barrister-at-Law*

On October 1, 1954, the Road Transport Lighting Act 1953, and the Road Transport Lighting (No. 2) Act, 1953, come into force. These Acts may be construed as one with the Road Transport Lighting Act, 1927, and may be cited together as the Road Transport Lighting Acts, 1927 to 1953. Under these new Acts and their Regulations (S.I. 1954, Nos. 1104, 1105) all motorists will be compelled to achieve higher standards of efficiency in the lighting systems on their vehicles. No drastic changes are prescribed for front lamps and the average existing motor-car (*i.e.*, registered or supplied before October 1, 1954) already satisfies the requirements demanded. The major innovations are made in connection with the provision of red rear lamps and red reflectors. All vehicles, except those brought temporarily into Great Britain by persons resident outside the United Kingdom, on the roads during the hours of darkness will, by October 1, 1954, require one or two red reflectors and, by October 1, 1956, must in addition be supplied with one or two red rear lamps. The details of these requirements, although somewhat dreary in exposition, will be of interest to all motorists, police and magistrates.

Rear lamps

By October 1, 1956, all vehicles, except bicycles, motor-bicycles without sidecars and existing public service vehicles (*i.e.*, public transport) all of which require one lamp, must be equipped with two red lamps facing the rear. These lamps must be illuminated over an area 2 inches in diameter or more and, if not circular, of such a shape that a circle of at least 1 inch in diameter may be inscribed somewhere upon the illuminated part. Bicycles, motor-bicycles and their sidecars, horse-drawn vehicles and agricultural implements need only show smaller lamps with an illuminated area 1½ inches in diameter but with the same criteria as to shape. Except on bicycles and motor-bicycles of less than 250 c.c. these lamps must have bulbs of 6 watts power or more, the wattage being clearly marked upon them.

The positions which these rear lamps are to occupy are clearly defined. The side of the vehicle or its equipment must not extend laterally more than 16 inches from the nearest part of the illuminated area. Distances of 24 inches and 30 inches are, however, permitted for horse-drawn and heavy vehicles respectively. The vehicle must not extend behind the lamps for more than 30 inches, a distance of 20 inches being prescribed for bicycles. Wider margins are allowed for heavy vehicles, horse-drawn vehicles and special trailers (3 feet 6 inches), and agricultural implements (4 feet 6 inches). The lamps must be between 3 feet 6 inches and 15 inches from the ground. On special trailers and agricultural implements the limit is 5 feet from the ground. Existing vehicles may exhibit red lamps within 24 inches of their outside limits thereby, it is submitted, permitting the continued use of illuminated rear number plates, with bordering red lamps. Pairs of lamps must be equidistant from the ground and so connected that should one fail the other would continue to function.

It should be noticed that new vehicles (*i.e.*, registered or supplied after September 30, 1954), all trailers, and agricultural implements drawn by new vehicles must have such lamps fixed. Existing bicycles and existing motor-bicycles of 50 c.c. or less must have them by October 1, 1955. Until otherwise required by these dates every such vehicle must have one rear lamp fixed centrally and so that no part of the vehicle projects to the rear more than 6 feet behind the lamp.

Red reflectors

By October 1, 1954, all vehicles, except bicycles and motor-bicycles without sidecars which only require one reflector, must be equipped with two clean red reflectors mounted vertically, visible from and facing the rear. The reflecting area must be at least 1½ inches in diameter or if not circular of such a shape that a circle of at least 1 inch can be inscribed somewhere upon the reflecting part. Group reflectors must have a total diameter of 6 inches or less, no one reflector being separated by more than 1 inch from another, and on new vehicles the reflectors must be fixed in a single holder. Red lamps which when extinguished act as reflectors are permissible. The positions of these reflectors are also precisely defined. No part of the vehicle must extend laterally more than 16 inches from the nearest reflecting area except that public service vehicles are allowed a margin of 24 inches and for bicycles and motor-bicycles a central or off-side position is permitted. The reflectors must not be more than 30 inches from the extreme rear of the vehicle (20 inches for bicycles and motor-bicycles). Wider margins for horse-drawn vehicles (3 feet 6 inches) and agricultural implements (4 feet 6 inches) are allowed. Reflectors must be lower than 3 feet 6 inches and higher than 15 inches (bicycles and motor-bicycles 12 inches) from the ground. Slightly higher vertical limits are allowed for heavy vehicles (4 feet 6 inches), special trailers and agricultural implements (5 feet). Pairs of reflectors should in every instance be equidistant from the ground.

Projecting loads and trailers

A vehicle carrying at night a load which projects to the rear must, from October 1, 1954, carry an additional rear lamp in such a position that no part of the load projects backwards more than 3 feet 6 inches behind that lamp. A vehicle drawing at night one or more trailers need carry upon the rearmost vehicle only two red lamps and two reflectors. In addition, any vehicle more than 5 feet in front of the drawn vehicle must carry the same complement of lights and reflectors as if it were itself the rearmost vehicle.

Reversing lights

Electric reversing lamps were made legal by S.I. 1953, No. 1546, which is now replaced. No vehicle may carry more than two reversing lamps of a total power of not more than 24 watts which must be controlled either automatically by operation of the gear lever in reverse or by a separate switch. Vehicles registered after June 30, 1954, require a device so that if a separate switch is used the driver may readily see that his reversing lamps are on.

Penalties

No new penalties are provided by the Acts in addition to those supplied by the Act of 1927, which, with some amendments, remains in force. These are, that if any person causes or permits any vehicle at night to be in contravention of the Acts or the Regulations, he shall be liable on summary conviction to a fine not exceeding £5, or in the case of a second or subsequent conviction to a fine not exceeding £20. But a person driving or being in charge of a vehicle shall not be convicted of such an offence if he can show that it arose from the negligence or default of some other person whose duty it was to provide the vehicle with any lamps or reflectors.

General points

Apart from the purely physical and mechanical requirements of the new Acts no novel questions of law arise. Matters of civil liability are not affected. The duty to light as now imposed remains purely a public duty and, as such, is not necessarily enforceable by any individual aggrieved: see *Clarke* v. *Brims* [1947] K.B. 497. To drive or park a vehicle without all necessary lights does not *ipso facto* amount to either a negligent act or to an actionable nuisance in every case: *Maitland* v. *Raisbeck* [1944] 1 K.B. 689. Each case will continue to depend upon its own special circumstances.

It might appear that the different positions for lamps and reflectors specified by the regulations whilst helping motorists to discern the presence of other vehicles do not supply a guide as to the distance from the eye of those vehicles to the front. It is submitted that were either the rear lamps or the reflectors to be placed a fixed distance apart drivers might more readily gauge the extent of some emergencies. Even so it can be hoped that the new requirements as they stand will materially assist in reducing road accidents.

A Day in a Police Court

By A. E. Jones
Magistrates' Clerk

The series of which this is the tenth instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Motoring Offences

The afternoon list began with 21 summonses for the lesser motoring offences. In the warrant officer's list they appeared as 6 speeds, 4 obstructions, 3 traffic signs, 1 pedestrian crossing, 2 brakes, 1 permit ditto, 1 steering, 1 permit ditto and 2 no lights. With small variations in numbers, similar cases appeared in every afternoon's list; with small variations the police evidence was the same in each type of case; this was true also of the fines imposed. An average of five defendants appeared each day; the rest sent letters or were represented by a solicitor from one of the motoring associations.

Mr. Sutterthwick, the magistrate, listened patiently and tried to prevent his adjudications from appearing automatic; tried also to hope that some good was being done.

" Dangerous and careless "

Twenty minutes after he had taken his seat on the bench Sergeant Quing, the warrant officer, called " Summonses 22, 23 and 24, your worship. P.C. 591. Peter Arundale " and placed a chair in front of the dock for the defendant. This was not likely to be a short case. P.C. 591, who in private life was Stephen Smart, had been the first policeman to arrive at the scene of an accident and, as a result of his report, Peter Arundale was now charged with driving in a manner dangerous to the public, driving without due care and attention and failing to conform to the indication given by a traffic sign.

An elegantly dressed gentleman in counsel's seat, rose and said, " I appear for the defendant, sir." More accurately in fact, though not in law, Mr. Bantingham might have said, " I appear for the defendant's insurers." Inspector Campting intimated that the police wished the magistrate to deal with the dangerous driving charge, and Frell, the clerk, duly informed the defendant of his right to claim to be tried by a jury [1]—a claim which Mr. Arundale, after a glance at his counsel, did not make. Mr. Bantingham then announced that there was a plea of not guilty to all summonses.

A plan of the junction of Broad Street and Lower Road was put in by the prosecution and the first witness then took the oath. In response to the clerk's first question he gave his full name; it was Charles Henry Alexander Vimy Barrett. In reply to further questions he gave his occupation as lorry driver and agreed that he was driving his lorry along Broad Street at about 2.30 p.m. on the day in question. Approaching the traffic lights at the junction with Lower Road he saw that they were red, and he slowed down to about 10 miles an hour. When he got to within about 30 yards of the lights the amber appeared. He carried on at the same pace and when he was about 10 yards away the lights changed to green. He accelerated then and carried on over the crossing. He had got almost half-way over when all of a sudden a car dashed out of Lower Road on his near side, coming straight for him. He tried to swerve away to his offside and the car at the last moment swung left, but it was too late. The car bashed into the front of his lorry, then shot across to the other side of the road and knocked down a lamp post there. It came to rest with all four wheels on the pavement and facing almost directly down Broad Street in the same direction that the lorry was going. He recognised the driver of the car in court; it was the defendant. Did he speak to him about the accident? Yes, he did. He was afraid he used some strong language. With trimmings, he asked: " Didn't you see the light? " What did the defendant say? Oh, nothing much. He didn't seem to know what to say; he never gave no proper explanation.

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[1] See *R.* v. *Salisbury and Amesbury Justices, ex p. Greatbatch* [1954] 3 W.L.R. 29; [1954] Crim.L.R. 547.

Mr. Bantingham rose to cross-examine. Wasn't the defendant too shaken up by the accident to discuss it sensibly at the time? Well, he may have been but he said he was all right. Wasn't that only in reply to a question whether he was hurt? Yes, perhaps it was. It was fair to say, wasn't it—and Mr. Bantingham was sure the witness wanted to be fair to the defendant—that he'd been involved in a very nasty accident and his car had been badly damaged? Yes, that was so—through his own fault, though. That was for the magistrate, not the witness, to decide, pointed out Mr. Bantingham. Perhaps the witness would, at any rate, be prepared to admit that the defendant wasn't likely to be very cool and collected after it? The witness, rather sulkily, couldn't say.

Was the witness quite sure that the light was green when he passed it? Wasn't the amber still showing with the red? Mr. Bantingham wanted him to be very careful before he answered that question, but the witness was perfectly sure that the light turned green when he was still some yards from it. Mr. Bantingham put it to him that rather than come to a standstill as he should have done he took a chance and crossed on the amber. The witness put it to Mr. Bantingham that it wasn't necessary to stop because the light turned green as he was slowing down.

If the witness slowed down how did he account for the fact that he was travelling at such a speed by the time he got to the middle of the crossing that he pushed the car completely round and flung it to the other side of the crossing on to the lamp post? It was the car's speed that did that, not the witness's; the gentleman must remember that his was a heavy lorry and the car sort of bounced off it. Did the witness seriously suggest that? Wasn't it perfectly obvious that the lorry had hit the front of the car and by its own momentum forced the car out of its course? No, the lorry didn't hit the car; it was the car that hit the lorry. Mr. Bantingham seemed disposed to pursue this but Mr. Sutterthwick intervened. "If they were both moving they hit each other," he said.

The cause of the accident

Counsel switched back to his former line of attack. Wasn't the whole cause of the accident that the witness approached and entered the crossing far too fast and without waiting for the light? Certainly not; he slowed down to 10 miles an hour and had only accelerated to about 15 or 18 when he saw the car. If he was crossing so cautiously how was it he didn't see the car in time to pull up and avoid the accident? Because the car came along too fast and went right smack into him. Mr. Bantingham put it to the witness that that wasn't so and that in fact he was going much faster than 15 to 18 miles an hour. In any case, wouldn't even that speed have been excessive with the road conditions as they were—wet and greasy? Not at all; it wasn't raining and the road wasn't wet. Did the witness really say that? Was the accuracy of the rest of his evidence to be judged by the accuracy of that statement? Yes, there was nothing wrong with the surface of the road. Mr. Bantingham sat down with an air which conveyed that the witness was so discredited that further questioning was unnecessary.

The next witness was Thomas Brady, the lorry drivers' mate. The words and details of his account of the accident were strikingly similar to those of his driver. The similarity struck Mr. Bantingham and he put it to the witness that he had talked over the affair with his fellow employee. But no, Thomas Brady was not going to have that; it might be the natural thing for them to discuss it; there might be no harm in it; it might be incredible that they should have used the same words if they had not talked over the incident; but he was emphatic that they had resisted this tempting subject of conversation and had never spoken to each other of any detail of the accident. Only in one matter did Mr. Bantingham get him to vary from the story told by the lorry driver; according to the mate the road was beginning to dry up in patches after recent rain, but it was still mainly wet.

An "independent witness"

Next there came Mrs. Lucy Morris, whom the police termed an "independent witness," meaning one who, having no interest in the result of the proceedings, was likely to have some regard for the sanctity of her oath to speak the truth. She had been standing on the south-east corner of Broad Street and Lower Road waiting for the lights to change so that she could cross Lower Road. She saw what she called the "auburn" light come up and then the green. Almost immediately the lorry came from behind and passed her; she was just about to step off the kerb when the car flashed by in front of her and went straight into the lorry. She thought the car must have been doing at least 40 miles an hour, but the lorry was going quite slowly. The car shot off the lorry into the lamp post and then spun round.

Mr. Bantingham's questions elicited that she had never driven a car, wasn't a good judge of speed in miles per hour, and didn't see the car till just before the collision. He failed, however, to get her to concede that the lorry might have passed her just before the light turned green. She didn't agree either that the car passed in front of her just at the moment she saw the green light appear. It wasn't true that, if her account was accurate she would have been off the kerb on her way across the road before the car came by; she always looked each way first before stepping off, even though the lights were in her favour. She gave it as her impression that the road had quite dried up after the rain.

The police witness

The last witness for the prosecution was P.C. 591. He gave the exact positions of the vehicles when he arrived on the scene of the accident and, at the request of the magistrate, he marked on the plan the spot where, judging by the dry mud deposited on the road, the collision had occurred. The officer also described in detail the damage to each vehicle. This was interesting for its own sake to the insurance company, but to the magistrate it had no value except for the light it might cast on how the collision occurred. The constable continued: "I took a statement from Mr. Charles Henry Alexander Vimy Barrett, the driver of the lorry. He said . . ."

"No, don't tell us what he said" interrupted the clerk. "It's not evidence unless the defendant heard it. Did he?"

"No, sir."

"Well, go on to what the defendant said."

"I asked Mr. Arundale what had happened and he said: 'I was travelling north along Lower Road at about 20 m.p.h. The traffic light was green as I approached, but just before I reached it, it turned yellow. I decided it would be safer to go on and I proceeded to cross when the lorry came into me on my right, pushed me round and threw me across the road on to the lamp post.' When given the statutory warning that the question would be considered of prosecuting him for one or more of the offences of reckless, dangerous or careless driving, the defendant said: 'Does that mean I shall be summoned? I don't see how you can call it reckless.'"

Mr. Bantingham questioned the officer closely about that 20 m.p.h. Didn't the defendant say actually that he was coming along Lower Road at about 20 m.p.h., but slowed down as he came to the lights? No, the constable was sure he didn't say that. There was quite a lot of conversation, wasn't there—much more than was given in evidence? But no, the policeman was not going to admit that he didn't take a complete note. Nor was he going to be taken outside the recorded word on any uncertain journeys into his memory of an incident which occurred a month ago; there was only one certainty—his note book, and counsel could not get him to budge from that.

Well, would it not be true to say that the defendant was badly shaken by the accident and possibly still rather confused? That might be so, but he appeared quite normal.

Lastly, would the witness agree that the road was wet and slippery? The constable consulted his notebook. No, the road was not greasy; it had been raining and the surface was still wet, but there was a wind blowing along Broad Street which tended to dry that thoroughfare quicker than Lower Road.

The traffic lights

The case for the prosecution was closed. "I have a submission to make, sir, that there's no case for me to answer," said counsel for the defence. "All the charges against the defendant really depend on the assumption that he must have gone against the traffic light which governed him. I submit that there's no evidence of that at all. No one of the witnesses saw that particular light. All the evidence you've heard—from the lady witness as well as the lorry driver and his mate—has been about the light showing the other way. But that doesn't necessarily mean that the light which my client passed must have been different. I don't like taking technicalities, but I'm entitled and, in fact, bound in the interests of my client to take any point that's open to the defence. There hasn't been any evidence in this case, as there often is from the police, that the lights were working properly. It does sometimes happen that this automatic machinery develops a defect. It is possible that there could be a time lag or a fault in the operation of the lights so that they were showing green to Broad Street and amber—or even green—to Lower Road at the same time. I submit that it's essential for the prosecution in this case, as they have no direct evidence about the colour of the defendant's light, to prove by other means what it was showing when he passed it. The Act, as you know, sir, specially provides that these lights are to be deemed, unless the contrary is proved, to be of the authorised type and to have been lawfully placed, but there is no section which says they are to be assumed to be in perfect working order at all times. I ask you, therefore, to say that there is no case against the defendant for having failed to conform to the indication given by a traffic sign, and therefore no evidence that he drove dangerously or carelessly."

Mr. Sutterthwick listened to this impassively and when counsel had resumed his seat he said without hesitation: "I don't think I'm bound to assume in the defendant's favour that there was a mysterious mechanical failure of the lights in this case—any more than I'm bound to assume just because the prosecution don't prove that the defendant's car was at all material times in perfect condition, that there was a mysterious failure in its mechanism which caused it, without his being to blame, to get out of his control. I think I'm justified in drawing an inference, prima facie, that mechanism has functioned as it was constructed to function. In my opinion the burden of proof is on whomsoever asserts the contrary. So I decide against your submission, Mr. Bantingham."

Unperturbed, Mr. Bantingham said: "Very well, sir. I'll call my client."

The case for the Defence

Mr. Arundale in the witness box gave his name and address, and his occupation as "company director," and then proceeded to the defence of his honour and the insurance company's funds. His counsel, having verified beforehand from Inspector Campting that there were no previous convictions against the defendant, began by getting his client's assent to the statement that he had been driving for eight years without any previous trouble of any kind. After that Peter Arundale went on, at his counsel's invitation, to tell his story in his own words. Here and there he was delicately and legitimately prompted by Mr. Bantingham when he seemed to be forgetting a point; but in the main he remembered all that he had told the insurance company's representative. He described the road as wet and greasy, and his speed at about 15 to 20 m.p.h. going along Lower Road; as he approached the cross roads he slowed down to 10 or 12 m.p.h.; the light turned amber when he was " right on top of it "; it would have been impossible to pull up safely so he carried on; then suddenly he saw the lorry coming into his offside at a very fast speed; he swerved but he had no chance to avoid the accident; the impact of the lorry was responsible for the subsequent behaviour of his car.

" Tell the magistrate," said Mr. Bantingham, " exactly how the two vehicles met."

The defendant sought for words for a moment, then his eye fell on the Old and New Testaments lying on the ledge of the witness box. " It was like this, sir," he said, seizing hold of them and bringing them into a brisk collision. The scandalised Sergeant Quing snatched the books away and Mr. Bantingham hurriedly said: " No. Try and describe it to his worship."

" Here you are, " said Mr. Sutterthwick, and produced two tiny toy cars he kept in his desk for these demonstrations. Everybody watched interestedly and happily as the witness arranged them, moved them and banged them together. Counsel, beaming benignly, looked like the producer at a successful first night.

After Mr. Bantingham had once more sat down, Mr. Sutterthwick put a question to the defendant. " Can you give me any idea in yards how far you were from the light when it turned amber? "

" Almost on top of it, sir—your worship. Only a few feet at most."

" You agree, I suppose that from your light to the point of impact was roughly half the distance it was from the lorry driver's light to the point of impact—I take it you were both on your respective near sides of the road? "

" Ye-es, your worship " doubtfully, not quite seeing where this was leading.

" Doesn't that mean, then, that the lorry driver must have passed his light at red if you passed yours almost at the moment the amber came up? "

The defendant was obviously in difficulties over the answer to this. Mr. Bantingham came to his rescue. " It's our case, of course, sir, that the lorry driver was going at least double our speed."

" Then that would mean," pursued Mr. Sutterthwick, " that the lorry driver going at say 20 to 25 m.p.h. passed the light immediately after the amber showed with the red and without waiting for any part of the three seconds it shows. Is that what you ask me to believe? "

The accused remembered the point his counsel had made earlier. " Maybe the lights had gone wrong, sir," he said, brightly.

" Is that the only thing you can think of that will account for the evidence of the lorry driver and his mate and the lady? "

Mr. Arundale began to feel that perhaps he had said the wrong thing, and he returned no reply. The magistrate had no further questions to ask, and the defendant went back to his chair in front of the dock. Counsel rose to make his final speech for the defence.

He said that, as the case was a simple matter of fact for the magistrate to decide, there was little he need say about it and he did not propose to address the court at length. He did, however, wish to draw the magistrate's attention to one or two points. He described it as unfortunate that the defendant had no witnesses, but he need hardly remind the magistrate that weighing the evidence in a case was not just a matter of counting heads. He submitted that his client, who had consistently told the same story from the very beginning, should be believed. He suggested that the lorry driver had anticipated the green light and passed on amber and red, thereby making himself the real culprit because the law did not permit that sort of thing under any conditions whatever—though it did recognise that circumstances might make passing the amber light alone inevitable. Counsel asked the magistrate to bear in mind now that he had heard the defendant's evidence as to the colour of the light he passed, the possibility of a mechanical fault in the traffic signs. He, as counsel, could not give evidence himself, but he ventured to suggest that it was common knowledge that they did go wrong occasionally. At any rate, on the question of the traffic lights he was confident that when the magistrate analysed the evidence he would agree that it boiled down to the oath of the lorry driver against the oath of the defendant. He thought it was clear that the mate was only repeating at second hand the lorry driver's own story and therefore did not carry the case any further. Counsel did not make any suggestion of partisanship against the lady who was about to cross the road but she only had a split second view of everything, and her estimate of speed was so manifestly absurd as to cast doubt generally on her powers of observation. He would concede that she was undoubtedly attempting to give her honest impression of what she saw, but she was a witness who could so easily have been mistaken about the exact sequence of events and lights that her evidence did not strengthen the case in any way against his client. He placed great stress on the discrepancy in the evidence of the prosecution witnesses as to the condition of the road surface; a conviction could surely not be founded on testimony which had proved so fallible in a matter of common everyday observation. He asked the magistrate, in view of the defendant's long unblemished record, to accept that in difficult road conditions he did his best as a careful driver in a situation which it would be wrong to impute to any unlawful conduct of his. If, however, the magistrate did not take this view—and counsel didn't want it to be thought he was doubtful of its validity, but if the magistrate did find against him it would save him addressing the magistrate again if he said while he was on his feet now that, at least, he trusted the defendant's driving would not be held dangerous and he hoped it would be deemed to amount to nothing but the more or less technical offence of passing a traffic light. However, should it be considered to amount to careless driving then he hoped the magistrate would be able to see his way to deal with the case as leniently as possible and, if there must be a conviction, to order that, in the special circumstances of the case, there should be no endorsement of the defendant's driving licence.

Mr. Bantingham's few words came to Frell as a pleasant oasis of relaxation in the day's tension. Dreamily he listened to the familiar verbal recipes; as long as no novel point of law was raised he could remain blessedly half conscious to what was being said.

Judgment

Sergeant Quing brought the defendant to his feet with a touch and motion as counsel sat down and the magistrate cleared his throat to give judgment. "I've no doubt on the evidence in this case," he said, "that when the amber light appeared the defendant was far enough away to have pulled up with safety if he had been driving at a proper speed, having regard to the road conditions, and with due care and attention. There is no reliable evidence that he was travelling at a high speed; it seems to be one of those all too common cases of trying to rush through on the amber. The defendant had the misfortune to meet another vehicle which had, so to speak, a flying start because it hadn't had to stop at the lights. It may be that the lorry driver even anticipated the green light but I'm not trying him and it wouldn't exonerate the defendant if it were true. I shan't find him guilty of dangerous driving but he was certainly guilty of more than passing a traffic sign. If he'd been driving with sufficient caution and keeping a proper look out this accident wouldn't have happened. I shall therefore convict him of careless driving and not deal separately with the traffic light offence. I see no special reason here to order that his driving licence be not endorsed. What are the police costs, Inspector?"

"£2 15s. 6d., your worship," said Inspector Campting. "Ten and sixpence for the plan, a pound each for the two men who've lost work by coming here, and five shillings for the female witness."

"There will be a fine of £5 and £2 15s. 6d. costs and an endorsement of the defendant's driving licence," concluded the magistrate.

The insurance company had lost the first round. Mr. Arundale handed over his driving licence to Sergeant Quing and went out to pay his fine to the gaoler.

Practice and Procedure

Quarter Sessions

The dating of orders of quarter sessions

Difficulties sometimes arise in practice over the dating of orders of quarter sessions, especially where the order is pronounced on some day other than the first day of the particular sessions. On the one hand, sessions in the eye of the law occupies one day only, no matter how long it may continue in fact: *Willway's Quarter Sessions Practice*, at p. 67, citing *R.* v. *Surrey Justices* (1813) 1 M. & S. 479. On the other hand, section 12 of the Stipendiary Magistrates Act, 1858 (an odd-sounding Act in which to find a ruling on quarter sessions !) provides that every sentence pronounced by quarter sessions (or adjourned sessions—why this should be specially mentioned does not appear, as an adjourned sessions is part of the original sessions: *Rawnsley* v. *Hutchinson* (1871) L.R. 6 Q.B. 305), must take effect from the time of its being pronounced, unless the court otherwise directs. The court, of course, very seldom does "otherwise direct," and therefore it seems that the correct procedure is for the order to be dated with the first day of sessions—the day which appears in all committals by magistrates—and the term of imprisonment or period of probation, etc., to be dated to commence with the actual day of the pronouncement of the sentence.

It is suggested that any standard practice, such as is in force it is understood in some courts, whereby every sentence is deemed to commence with the first day of sessions is wrong; if the court desires to vary the rule of the 1858 Act, the date of commencement of the sentence should, it is submitted, be stated in each case. An assize judge wishing to discharge a guilty prisoner forthwith, and sitting on (say) the third day of the assize, can give him three days' imprisonment without saying more, but a recorder or chairman of quarter sessions wishing to achieve the same end will have to provide that the three days should run from the first day of sessions. (See also Archbold, 33rd ed., p. 224, para. 403.) [J. F. Garner, Clerk of the Peace, Borough of Andover.]

Magistrates' Court

Forfeiture of a recognisance as a "charge"

The effect of subsections (3) and (4) of section 2 of the Magistrates' Courts Act, 1952, is that a magistrates' court may, in certain specified circumstances, assume jurisdiction over offences not within its area. The commonest instance of this is the case of a person accused of offences committed within more than one territorial jurisdiction. In proceedings of this type the defendant may have originally been arrested for the first offence and, after having been bailed to appear at the magistrates' court exercising jurisdiction in the place where the offence was committed, may have failed to appear. If he next comes into the hands of the law through the commission of a further offence in another court's area that court may deal with him also in respect of the first offence—provided he has not already been convicted of it. But if the police add to the accusations against him a "charge" in relation to the recognisance entered into, the second court will not have jurisdiction to act as the first court could and declare that recognisance to be forfeited. This follows from the wording of section 96 (1) of the Magistrates' Courts Act, 1952, which provides that this step is to be taken by the court before which the defendant was bound to appear. It is true that payment of any sum adjudged to be paid may, by subsection (4) of section 96 (*supra*), be enforced as if it were a fine, but this cannot be considered equivalent to constituting the matter an offence (see *Cockhill* v. *Davies* [1943] K.B. 508). The forfeiture by one magistrates' court of a recognisance to appear before another magistrates' court can only be justified if the second court comes within the terms of section 124 (2) of the Act of 1952 and acts "for the same petty sessions area" as the first court. [A. E. Jones.]

Coroners' Court

When is a body "recoverable"?

The efficiency of the international police organisation ("Interpol") has led to an awkward problem in the coroner's court. Recently a man disappeared from a coastal town in circumstances which indicated beyond doubt that he had taken his life by drowning. No body was recovered and after a reasonable interval it was decided to apply to the Home Secretary for permission to hold an inquest without a preliminary view of the body under the Coroners Amendment

Act, 1926, s. 18. (When a coroner has reason to believe that a death has occurred in or near the area within which he has jurisdiction . . . and that owing to the destruction of the body by fire or otherwise or to the fact that the body is lying in a place from which it cannot be recovered.) Mr. Purchase in his article on p. 46 states that permission will not be given if there is already some available evidence of the body. However, before the inquest could be held " Interpol " reported that a body identified as that of the man in question had been washed up on a foreign shore. The position as to holding an inquest under section 18 now became doubtful. The body was plainly recoverable and the relatives could have arranged to bring the body back to England for burial. If the relatives had done this, the coroner whose area included the port of entry of the body into England would have become seised of the body. Matters preceding the " finding " of the body in his area do not affect his jurisdiction but it is unlikely that he himself would have held an inquest as he could have exercised his powers under section 16 to remove the body into the other coroner's area for inquest if he considered it expedient to do so and the other coroner had given his permission.

However, it is more likely, as in fact happened in this case, that the relatives do not want to be put to the trouble and expense of bringing the body back and prefer that it should remain buried abroad. The coroner of the coastal town, therefore, held an inquest under section 18 deeming the body to be lying in a place from which it could not be recovered. As permission had been obtained from the Home Secretary who was in full possession of the facts it would appear that the question as to whether the body was recoverable or not was left to the discretion of the coroner who was no doubt fortified by a written statement from the relatives of the deceased to the effect that they did not want to bring the body home. There can be little doubt that the coroner took the most practical course in the circumstances, but whether every coroner will take this view of such facts in the future is a matter for conjecture. The point is of more than academic interest to the relatives of the deceased in this type of case who will require evidence of death in order to settle the estate. If an inquest under section 18 is refused, then they will be obliged to bring a suit for presumption of death in the High Court with its attendant costs. It might indeed prove less expensive to bring the body back to England for inquest " with a view " when the necessary certificate could be issued by the coroner.

A little more than 100 years ago there was no method by which a coroner could call medical evidence, the modern police force was in its infancy and scientific methods of identification of bodies were practically unknown. It was not surprising, therefore, that paramount importance was attached to a view of the body by the coroner holding the inquest, and as recently as 1925 the rule was "No body, no inquest." The strictness of this rule has been relieved by subsequent legislation to only a small extent, and the survival of the notion up to the present day is responsible for much of the difficulty in this type of case. [J. D. J. Havard, M.A., LL.B., M.B., B.Chir., Barrister-at-Law.]

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Case and Comment

[Reports of cases included here are prepared by C. J. ELLIS, *Barrister-at-Law*, unless otherwise appears]

Accomplices—*Evidence of.* See R. *v.* HADFIELD, p. 788, below.

Assault—*Sterilisation "without just cause or excuse"—whether criminal—effect of consent*

BRAVERY *v.* BRAVERY[1] (C.A.: Evershed M.R., Denning and Hodson L.JJ.: July 26, 1954) ([1954] 1 W.L.R. 1169; [1954] 3 All E.R. 59).

A husband submitted to a sterilisation operation with the knowledge of his wife. On the question whether this was an unlawful assault, criminal *per se*:—

Held (Denning L.J. dissenting), whilst the court must take notice of any relevant illegality which appears in the course of any proceeding before it, in the present case, both the general question, whether an operation for sterilisation is prima facie illegal, and the more particular question, whether the operation here performed was a criminal assault, were alike irrelevant to the issue to be determined.

DENNING L.J.: An ordinary surgical operation, done for the sake of a man's health with his consent is lawful because there is just cause; if there is no just cause or excuse it is unlawful. This applies also to sterilisation operations. It is illegal even though the man consents to it, for it comes within the principle stated by Stephen J. in *R.* v. *Coney* (1882) 8 Q.B.D. 534 at 549, which is well illustrated by *R.* v. *Donovan* [1934] 2 K.B. 498, and clearly covers cases of sterilisation.

COMMENTARY. The principle as to consent stated by Stephen J. in *R.* v. *Coney*, *supra*, was (*per* Evershed M.R. and Hodson L.J.) to be related to prize fights which were against public interest, and the observations were wholly inapplicable to sterilisation operations, which could not be regarded as injurious to the public interest.

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[1] For the appellant: *Edward Grayson* (instructed by James Brodie & Co.). For the respondent: *L. I. Stranger-Jones* (instructed by Hy. S. L. Polak & Co.).

In *R.* v. *Donovan, supra* (*per* Evershed M.R. and Hodson L.J.). none of the examples given appears to bear any close analogy to an operation for sterilisation.

See Archbold, 33rd ed., 996.

Betting—*Place used for purposes of betting—stall at fair*

R. *v.* HARRIS [2] (Northampton Magistrates' Court: Dr. Eric Shaw, chairman: July 5, 1954).

H. was charged with using a stall at a fair ground for the purpose of betting contrary to section 3 of the Betting Act, 1853. He operated a game known as "Roll Your Penny Disc." The participant rolled pennies down a small inclined chute, which could be swivelled to alter the direction of the pennies, while their speed could be regulated by releasing the penny higher or lower down the chute. The pennies rolled on to a flat surface with a number of studs in straight rows, and one stud which, when touched by a penny, caused a board to be illuminated and a number between 2 and 6 to be indicated. The successful participant was then awarded that number of pennies as a prize. It was admitted that this was merely a version of a well-known game which had for years been played in almost every fair ground; it was proved that occasionally some participants had to be warned off, having become too skilful. The prosecution contended that this was a game of chance and not skill; moreover, whether skill was required or not the participant was betting against the owner of the stall and, according to *R.* v. *Peers and Brown* (1917) 12 Cr.App.R. 210, if any place is kept for the purpose of enabling the owner to gain money on any event or contingency within section 1 of the Betting Act, 1853, the fact that this is brought about by a game of skill does not prevent it being an offence. The defence argued that a participant in the game played for his own amusement, as in a rifle shooting gallery, and that the game involved skill and not chance; a liberal and common-sense approach ought to be made in construing the statute. Reference was made to the judgment of Lord Reading C.J. in *R.* v. *Peers and Brown, supra*, at p. 214: "The test is, what is the intention of the person keeping the house, and if it can be established that he provided the machine merely to afford to the players opportunities of exercising their skill, there is no offence under the Act . . . whether or not a game is one of skill is immaterial in the case of an offence under the Betting Act, 1853."

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[2] For the prosecution: D. Leeming, Assistant Solicitor, Northampton Corporation. For the defendant: *R. M. A. Braine* (instructed by Dennis, Faulkner & Alsop, Northampton, for Few & Kester, Cambridge).

Held, that the defendant was guilty; he was fined £1. [Reported by R. M. A. Braine, *Barrister-at-Law*.]

COMMENTARY. The Betting Act, 1853, s. 1, provides: "No house, office, room or other place shall be . . . used . . . for the purpose of any money or valuable thing being received by or on behalf of [the] owner . . . as or for the consideration for any assurance, undertaking, promise or agreement . . . to pay or give thereafter any money or valuable thing on any event or contingency . . . "; s. 3 provides: "Any person who being the owner of any . . . place . . . shall use the same for the purposes herein-before mentioned . . . [shall be liable to a penalty]."

See Archbold, 33rd ed., 1413; Stone, 86th ed., 1025, 1029.

Contempt of Court—*Application by litigant in person*

Re G.'s APPLICATION FOR A COMMITTAL ORDER [3] (Chancery Division: Vaisey J.: July 20, 1954) ([1954] 1 W.L.R. 1116; [1954] 2 All E.R. 794n.).

An applicant in person moved the court to commit the respondent for alleged contempt, but was stopped by the court raising the question whether the litigant in person could so apply:—

Held, it is a well-settled rule of this court that a party in person cannot move for a writ of attachment, which is precisely the same, in its nature, as moving for a committal order. In both *Ex p. Fenn* (1834) 2 Dow.P.C. 527, and *Ex p. Liebrand* [1914] W.N. 310, applications for writs of attachment, it was held that applicants in person could not be heard. The motion was dismissed.

COMMENTARY. Whether this case is applicable to the Queen's Bench Division is doubtful since the unreported decisions in *R.* v. *Powell, ex p. Hawkins* (1947) (applicant in person could move for an order of mandamus), and *Ex p. Collett* (1952) (applicant in person heard on an application for attachment): see also Griffits, *Guide to Crown Office Practice*, 91, and Supplement.

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[3] The applicant appeared in person. For the respondent: *S. Seuffert* (instructed by Miller, Clayton & Co.).

Courts-martial — *Jurisdiction — transfer of soldier to the reserve*

R. *v.* HADFIELD [4] (Courts-Martial Appeal Court: Lord Goddard C.J., Cassels and Slade JJ.: July 19, 20, 1954) ([1954] 1 W.L.R. 1128; [1954] 2 All E.R. 765).

H., a sergeant in the R.A.S.C., was convicted by a court-martial, sitting in the Canal Zone, of various offences including conspiracy to steal Government property, stealing it and selling it to Egyptians. H. enlisted on June 10, 1948, for five years with the colours and seven years with the reserve. He appealed against his conviction on two grounds: first, that his colour service having terminated on June 10, 1953, he was not subject to military law on June 17, when he was arrested while still in Egypt, not having been sent back to the United Kingdom; secondly, that the evidence against H. consisting largely of that of accomplices, the judge-advocate had misdirected the court-martial, in particular regarding matters on which he relied as corroboration of the accomplices' evidence.

Held, dismissing the appeal, that (1) it was impossible to read section 90 of the Army Act, in particular in view of subsection (3) which provides " Every soldier of the regular forces, upon falling to be transferred to the reserve, shall be transferred to the reserve, but until so transferred shall be subject to this Act as a soldier of the regular forces " as saying that the moment that a soldier was entitled to be transferred to the reserve he ceased to be subject to military law.

(2) There was no misdirection; the judge-advocate had carefully explained the law and practice regarding accomplices' evidence, and directed the court that if, bearing in mind the danger, they were nevertheless satisfied that the accomplices were telling the truth, they were entitled to convict. By directing the court that if they came to the conclusion that H.'s story regarding certain incidents was patently untrue, the fact that he was lying could amount to some corroboration of the accomplices' evidence, the judge-advocate was only putting to the court that if they thought H.'s story was untrue that formed some support for the accomplices' story.

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[4] For the appellant: *Norman Skelhorn Q.C., N. J. L. Brodrick* (instructed by Hunt & Hunt for Kingswell & Berney, Gosport). For the Crown: *Garth Moore* (instructed by the Director of Army Legal Services).

Factories, Workshops, etc.—*Building Regulations—"working place"*

George Ball & Sons *v.* Sill[5] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Slade JJ.: July 26, 1954) (118 J.P.J. 519).

The appellants, who were building contractors, had been convicted under regulation 24 (1) of the Building (Safety, Health and Welfare) Regulations, 1948, of failing to provide a suitable guard-rail to a working place which was raised more than 6½ feet from the ground. The appellants were carrying out work on a building, the roof of which was flat and over 40 feet from the ground. There was no guard-rail round it. A workman, while at work on the roof, went to the edge, overbalanced and fell. He was killed. On appeal, the contractors claimed that the roof was not a "working place," and therefore the regulation did not apply.

Held, dismissing the appeal, that a "working place" meant a place where work was being done; the regulation accordingly applied and the appellants had been rightly convicted.

Firearms and Offensive Weapons—*Possession of firearms without lawful authority—lawful excuse*

Wong Pooh Yin *v.* Public Prosecutor[6] (Judicial Committee of the Privy Council: Lords MacDermott and Cohen and Mr. L. M. D. de Silva: July 27, 1954) ([1954] 3 W.L.R. 471; [1954] 3 All E.R. 31).

The appellant was convicted of carrying a revolver without lawful authority contrary to the Emergency Regulations, 1951, and was sentenced to death. The prosecution evidence showed that the appellant, a former Chinese bandit in Malaya, was carrying a revolver without lawful authority and the appellant did not seek to challenge that. His defence was that when the revolver was found on him, he was on his way to surrender it in compliance with a Government pamphlet, and therefore had a "lawful excuse" for carrying the firearm within the meaning of the regulations. The Court of Appeal of the Federation of Malaya, dismissing the appeal held, that the trial judge had rightly rejected the submission that a "lawful excuse" had been established which entitled the appellant to be acquitted, and rightly withdrawn the issue from the assessors. On appeal:—

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[5] For the appellants: *R. H. Forrest Q.C.*, *C. M. Clothier* (instructed by Lightbounds, Jones & Co., for E. R. Hoskinson, Montgomery & Co., Liverpool). For the respondents: *Walter Gumbel* (instructed by the Solicitor, Ministry of Labour and National Service).

[6] For the appellant: *Dingle Foot Q.C.*, *T. O. Kellock*, *Dr. Colvin de Silva* (instructed by Hy. S. L. Polak & Co.). For the prosecution: *Melford Stevenson Q.C.*, *D. A. Grant* (instructed by Charles Russell & Co.).

Held, allowing the appeal, that it was not possible to define "lawful excuse" and each case required to be examined on its own facts. The defence of "lawful excuse" might be sufficiently proved although no "lawful authority" existed for doing what was charged against the accused. The appellant's testimony, if accepted, went far enough to justify a finding that the appellant was carrying the revolver on the occasion in question in the course of complying with the Governor's request and because he wanted to surrender it. Such a finding would have warranted a verdict of "lawful excuse" and that issue ought to have been left to the assessors.

COMMENTARY. The Malay Emergency Regulations, 1951, reg. 4 (1), provided: "Any person who without lawful excuse . . . carries . . . (*a*) any firearm, without lawful authority therefor . . . shall be guilty of an offence."

Housebreaking—*Constructive breaking—entry obtained by means of a trick*

R. *v.* BOYLE [7] (Court of Criminal Appeal: Lord Goddard C.J., Cassels and Slade JJ.: July 19, 1954) ([1954] 3 W.L.R. 364; [1954] 2 All E.R. 721).

B. was charged on an indictment containing four counts; the first count charged him with breaking and entering a dwelling-house with intent to steal, and stealing a handbag and other articles belonging to X, the occupant; the second, third and fourth counts charged B. with forging a cheque for £450, uttering the forged security and fraudulently obtaining a motor-car with the proceeds. B. went to X's house and falsely told her that he had been sent by the B.B.C. to locate a radio disturbance. X admitted B. to the house, showed him the radio set and then left him to get a glass of water which he had requested. While X was out of the room B. stole her handbag which contained, among other things, a blank cheque, which B. forged and which was the subject-matter of the latter counts. At the trial the whole indictment was read to B., to which he pleaded Guilty and was sentenced to four years' imprisonment. B. appealed against his conviction on the first count on the ground that, although he had pleaded Guilty, on the evidence he should not have been charged with housebreaking but with larceny.

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[7] For the appellant: *Garth Moore* (instructed by the Registrar, Court of Criminal Appeal). For the prosecution: *Victor Durand* (instructed by the Solicitor, Metropolitan Police).

Held, dismissing the appeal, that (1) B. had obtained entry by means of a trick, and therefore there was a constructive breaking, and he was properly convicted of housebreaking. The law regarding constructive breaking could not be stated better than it is in Archbold, 33rd ed., at p. 669: "A constructive breaking is where the offender, with intent to commit a felony, obtains admission by some artifice, trick, or threat, for the purpose of effecting it."

(2) Where an indictment contains several counts, whether they are of a different nature or alternative counts, each count should be put to the accused separately, and he should be asked to plead to each particular count separately as it is read to him, so that there can be no doubt as to which count the accused intends to plead.

COMMENTARY. See Archbold, 33rd ed., 144, 669.

Indictment—*Plea*. See R. *v*. BOYLE, p. 790, above.

Lottery—*Private lottery—lottery run by club among its members*

WILLIAMS, WOLFF, DOWN AND BURGOYNE *v*. MAYNARD [8] (Devon Quarter Sessions Appeal Committee: Sir Leonard Costello, chairman: July 27, 1954).

The appellants had been convicted under section 22 (1) of the Betting and Lotteries Act, 1934, for selling and distributing tickets and using premises for purposes connected with a lottery. They were all members of the executive committee of the Torquay United Supporters' Club, one of the objects of which was to raise money. They admitted running a lottery, but alleged that it was a private lottery since the sale of tickets was confined to members of the club, which was not a society established and conducted for purposes connected with gaming, wagering or lotteries; therefore, under section 22 (2), they were Not Guilty of any offence. The prosecution admitted that tickets for the lottery were confined to members of the club, but submitted that one of the purposes of the club was to raise money, and as this had been done by the appellants running a lottery, the club was conducted for purposes connected with lotteries. On appeal:—

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[8] For the appellants: *Dingle Foot Q.C.*, *T. O. Kellock* (instructed by Arthur & Co.). For the respondents: *J. T. Molony* (instructed by the Director of Public Prosecutions).

Held, (1) that the running of the lottery was only incidental and ancillary to the other methods used by the club to carry out their stated purpose of helping the Torquay United Association Football Club; (2) the club was a society which was established and conducted on the whole for purposes not connected with gaming, wagering or lotteries; (3) the lottery was a private lottery. The appeals were allowed with costs. [Reported by T. O. Kellock, *Barrister-at-Law.*]

COMMENTARY. The Betting and Lotteries Act, 1934, s. 22, provides: "(1) Subject to the provisions of this section, every person who . . . (*b*) sells or distributes . . . any tickets or chances in the lottery; or . . . (*f*) uses any premises . . . for purposes connected with the promotion or conduct of the lottery; . . . shall be guilty of an offence. (2) In any proceedings instituted under the preceding subsection it shall be a defence to prove that the lottery to which the proceedings relate was such a lottery as is declared by any subsequent section of this Part of this Act not to be an unlawful lottery. . . ."

See Archbold, 33rd ed., 1430, 1431; Stone, 86th ed., 1494, 1496; Stroud's *Judicial Dictionary,* 3rd ed., Vol. 3, 2301.

Magistrates—*Clerk—bias*

R. *v.* CAMBORNE JUSTICES, *ex p.* PEARCE [9] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Slade JJ.: July 29, 1954) ([1954] 3 W.L.R. 415; [1954] 2 All E.R. 850).

Informations were laid against the applicant under the Food and Drugs Act, 1938, by a sampling officer on behalf of a county council. During the hearing before the justices the clerk to the justices was sent for by them when they were considering their verdict to advise them on a point of law. The facts of the case were not discussed with the clerk, who returned to the court when he had given his advice. Unknown to the applicant at the hearing, the clerk was at the time a member of the council, but was not a member of the council's health committee before which the proceedings against the applicant had been discussed. The justices convicted the applicant, who applied for an order of certiorari to quash the conviction on the ground that a reasonable suspicion of bias might arise:—

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[9] For the applicant: *P. Malcolm Wright Q.C., S. J. Pedlar* (instructed by Jaques & Co., for Stephens & Scown, St. Austell). For the justices: *F. S. Laskey* (instructed by Burton, Yeates & Hart for Vivian Thomas & Jervis, Penzance). For the prosecutor: *Paul Wrightson* (instructed by Sharpe, Pritchard & Co., for E. T. Verger, Clerk to Cornwall C. C.). As *amici curiae*: *Sir Reginald Manningham-Buller Q.C., S.-G., J. P. Ashworth* (instructed by the Treasury Solicitor).

Held, to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceeding, a real likelihood of bias must be shown. And this likelihood must be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries. The facts did not disclose any real likelihood of bias and the application would be dismissed.

COMMENTARY. Allegations of bias have been coming before the court with such frequency that it seems that Lord Hewart C.J.'s reminder in *R.* v. *Sussex JJ., ex p. McCarthy* [1924] 1 K.B. 256, 259, that justice should not only be done but should be seen to be done, is being used as a warrant for quashing convictions or invalidating orders upon quite unsubstantial grounds and upon the flimsiest pretexts of bias. It is not more important that justice should appear to be done than that it should in fact be done.

See Stone, 86th ed., 247.

Murder—*Provocation*

R. *v.* MCCARTHY (Court of Criminal Appeal: Lord Goddard C.J., Hallett and Pearson JJ.: May 3, 1954) ([1954] 2 W.L.R. 1044; [1954] 2 All E.R. 262).

BEDDER *v.* DIRECTOR OF PUBLIC PROSECUTIONS (House of Lords: Lords Simonds L.C., Porter, Goddard C.J., Tucker, and Asquith of Bishopstone: July 30, 1954) ([1954] 1 W.L.R. 1119; [1954] 2 All E.R. 801).

FURTHER COMMENTARY. See article "Provocation and the Reasonable Man," by Glanville Williams, LL.D., at p. 740, above.

Nuisances — *Noise — continuous noise from wireless and gramophone*

ORLAND *v.* WOLAK[10] (West London Magistrates' Court: Sir John Cameron, Bart., Metropolitan Magistrate: August 11, 1954).

W. was summoned for having operated a wireless loudspeaker, gramophone and amplifier so loudly, continuously or repeatedly as to cause a nuisance to his neighbours in contravention of a by-law made by the Kensington Borough Council under the London County Council (General Powers) Act, 1934. W. pleaded Not Guilty and denied that the noise of the radio and gramophone was excessive or a nuisance. The prosecution alleged that the noise created by W. was designed by him to drive another tenant of the house in which he lived to leave so that W. could secure a better flat for himself. The tenant living below W. was unable to occupy the room immediately below that in which W. had his radio. In accordance with the by-law, a notice of complaint signed by three local residents had been served on W. in May, but the noise continued unabated.

The defendant was fined £3. [Reported by Michael Sherrard, *Barrister-at-Law.*]

COMMENTARY. The by-law (which is similar to many others in the metropolitan area) provides: "(1) No person shall . . . (*b*) upon any [private] premises, by operating or causing or suffering to be operated any wireless loudspeaker, gramophone, amplifier or similar instrument make or cause or suffer to be made any noise which shall be so loud and so continuous or repeated as to cause a nuisance to occupants or inmates of any premises in the neighbourhood. Provided that no proceedings shall be taken against any person for any offence . . . unless the nuisance be continued after the expiration of a fortnight from the date of the service on such person of a notice alleging a nuisance, signed by not less than three householders residing within the hearing of the instrument as aforesaid. (2) Any person offending against the foregoing by-law shall be liable on summary conviction to a fine not exceeding £5."

The provisions and the powers of the London County Council (General Powers) Act, 1934, are very similar to those contained in s. 23 of the Municipal Corporations Act, 1882, replaced by s. 249 of the Local Government Act, 1933, under which similar by-laws by other boroughs have been made.

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[10] For the prosecution: *Michael Sherrard* (instructed by Pollard & Co.). The defendant appeared in person.

Road Traffic — *Imprisonment* — *" special circumstances "* — *sudden emergency*

AICHROTH *v.* COTTEE[11] (Q.B., Divisional Court: Lord Goddard C.J., Cassels and Slade JJ.: July 27, 1954) ([1954] 1 W.L.R. 1124; [1954] 2 All E.R. 856).

A., a baker, was convicted before justices of driving a motor-vehicle while disqualified and was sentenced to three months' imprisonment. A. appealed to the Appeals Committee, who found the following facts: A., having been disqualified after a conviction for careless driving, was telephoned by his foreman one morning at 5 a.m. and told that the dough-mixing machinery at his bakery had broken down. A. had the keys to the store where the tools were kept and if the machinery was not repaired, material would be wasted and A. would be unable to supply his clients. There were no taxis about, and A. drove his car from West Norwood to his bakery in Hampstead. He had contended that those circumstances could amount to " special circumstances " within section 7 (4) of the Road Traffic Act, 1930, justifying the court in not imposing a prison sentence. The Appeals Committee were of the opinion that the circumstances were special to the offender and not to the offence, and that, therefore, it was not open to them to find that a fine would be adequate. On appeal:—

Held, allowing the appeal, that it was a reasonable deduction from *Whittall* v. *Kirby* [1947] K.B. 194, where the court had attempted to lay down what could be " special circumstances," that the court had there meant to say that a sudden emergency, provided that it was sufficiently serious, would amount to " special circumstances." If there was a sudden emergency with which A. was required to deal, *Whittall's* case left it open to the Appeals Committee to say that that was a special circumstance, although it would not suffice if there were other methods of meeting the emergency. Accordingly, the case would go back to the Appeals Committee to determine whether the circumstances were " special circumstances " within the meaning of section 7 (4) of the Act of 1930.

COMMENTARY. In *Whittall* v. *Kirby, supra,* the court was considering special reasons under s. 15 (2) of the Act of 1930 (disqualification for driving under the influence of drink). It was held that a special reason for not disqualifying the offender must be some mitigating circumstance peculiar to the facts constituting the offence and not some circumstance peculiar to the offender.

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[11] For the appellant: *Edward Clarke* (instructed by Wontner & Sons). For the Metropolitan Police: *Paul Wrightson* (instructed by the Solicitor, Metropolitan Police).

See Archbold, 33rd ed., 1019, 1025; Stone, 86th ed., 2034, 2061 note (*f*); Stroud's *Judicial Dictionary*, 3rd ed., Vol. 4, 2824, 2830.

Road Traffic—*Prosecution—validity of notice of intended prosecution*

HARRIS *v.* DUDDING [12] (Sittingbourne Magistrates' Court: August 30, 1954).

D. was charged with driving without due care and attention. At the time of the alleged offence the police gave D. no warning, in accordance with section 21 (1) (*a*) of the Road Traffic Act, 1930, that he might be prosecuted for an offence, but within fourteen days he received a notice purporting to be served under section 21 (1) (*c*), in the following terms: " . . . the question of prosecuting you for an offence . . . will be taken into consideration." The notice then set out a full list of the offences for which a notice is required as a pre-requisite to a conviction. The defence took a preliminary point as to the validity of the notice. Counsel contended (1) that the notice was not a notice of " intended prosecution," but merely a written form of a constable's oral form of warning. When the authorities had had up to fourteen days to consider the matter the notice was designed to show that it was actually intended to prosecute; (2) the notice failed to specify for which type of offence under the Act it was intended to prosecute, and gave the accused no indication of the nature of the offence alleged against him. The prosecution alleged that the wording of the notice was sufficient to indicate to the defendant that he would probably be prosecuted. The form was perfectly proper, because there was nothing to prevent the prosecution stating that they intended to prosecute for all the offences specified.

Held, the notice was valid; it indicated to the defendant that proceedings might be taken against him and the nature of the offence involved. [Reported by Michael Sherrard, *Barrister-at-Law.*]

COMMENTARY. The Road Traffic Act, 1930, s. 21, provides: " Where a person is prosecuted for an offence under any of the provisions of

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[12] For the prosecution: J. Newton, Solicitor for the Police. For the defendant: *James Macaskie* (instructed by Clifford-Turner & Co.).

[Part I] of this Act relating respectively to the maximum speed at which motor-vehicles may be driven, to reckless or dangerous driving, and to careless driving, he shall not be convicted unless either—(*a*) he was warned at the time the offence was committed that the question of prosecuting him for an offence under some one or other of the provisions aforesaid would be taken into consideration; or . . . (*c*) within . . . fourteen days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him. . . ."

See Archbold, 33rd ed., 1020, 1026; Stone, 86th ed., 2051.

Trial—*Plea*. See R. *v*. BOYLE, p. 790, above.

Acts and Orders

Animals

Slaughter of Animals (Amendment) Act, 1954 (2 & 3 Eliz. 2, c. 59): operative October 1, 1954.

Unless the licence expressly so provides, horses may not be slaughtered in premises licensed for use as slaughterhouses or knackers' yards under section 57 of the Food and Drugs Act, 1938, or, in Scotland, under section 9 of the Slaughterhouses Act, 1954, or section 33 of the Public Health (Scotland) Act, 1897 (s. 1).

The Minister of Food may make regulations to secure the humane slaughter of animals and such regulations may prescribe penalties for offences (s. 2 (1) (4)).

A slaughterman's licence granted after October 1, 1954, under section 3 of the Slaughter of Animals Act, 1933, or section 2 of the Slaughter of Animals (Scotland) Act, 1928, must specify the kind of animals which he may slaughter or stun and the types of instrument he may use; in such cases as may be prescribed by regulations, the licence may also contain a condition that the slaughter of an animal is to be supervised (s. 3 (1)); in England and Wales the period of the licence is not to exceed one year and a licence to slaughter or stun horses is only valid within the district of the local authority granting it (s. 3 (3)). Where a person has been convicted of an offence under the Slaughter of Animals Acts, 1933–1954, Slaughter of Animals (Scotland) Acts, 1928–1954, the Protection of Animals Act, 1911, the Protection of Animals (Scotland) Act, 1912, section 20 of the Diseases of Animals Act, 1950, or under regulations under this Act, the local authority may refuse to grant, or may revoke or suspend a licence (s. 3 (5)).

Section 1 (1) of the Act of 1933, which provides for the instantaneous slaughter or stunning of certain animals, is extended to apply to all animals in England and Wales, and the exception contained in section 1 (1) proviso (*a*) concerning the slaughter of pigs is repealed (s. 4).

Any person who slaughters or stuns an animal in contravention of section 1 or 3 of the Act of 1933 or section 1 of the Slaughter of Animals (Pigs) Act, 1953, or attempts to do so is liable to a fine not exceeding £50 or to imprisonment for not more than three months or both, unless he proves the contravention was necessary to prevent suffering to any person or animal. A person who knowingly makes a false statement to obtain a licence is liable to the same penalties (s. 5 (1) (2)). If the person convicted, either as a principal or as an aider and abettor, holds a licence under section 57 of the Food and Drugs Act, 1938, the court may cancel the licence (s. 5 (3)). Similar provisions are made as regards Scotland (s. 5 (4)).

The powers of entry into slaughterhouses and knackers' yards of medical officers of health and sanitary inspectors under section 7 of the Act of 1933 are extended to officers of the Minister of Health and veterinary surgeons appointed by local authorities (s. 6 (2)). Such persons are also given powers of entry for the enforcement of regulations made under this Act (s. 6 (1)).

The Slaughter of Animals (Amendment) Act, 1951, is repealed and other Acts are amended (s. 11, schedule 2).

PROHIBITION OF LANDING OF SWINE FROM NORTHERN IRELAND (REVOCATION) ORDER, 1954 (S.I. No. 1055): operative August 9, 1954.

The Order of 1954 (S.I. No. 722, see [1954] Crim.L.R. 635), which prohibited the landing in Great Britain of pigs from Northern Ireland unless intended for immediate slaughter, is revoked.

Armed Forces

VISITING FORCES (DESIGNATION) (COLONIES) (AMENDMENT) ORDER, 1954 (S.I. No. 1041): operative July 30, 1954.

The Visiting Forces Act, 1952, applies with modifications to American Forces in Gibraltar.

See [1954] Crim.L.R. 558.

RULES OF THE SUPREME COURT (No. 2), 1954 (S.I. No. 1027): operative September 1, 1954.

Order 59, Rule 26A of the R.S.C., which relates to applications for attachment for contempt committed in connection with proceedings before a court-martial, applies with the necessary modifications to proceedings before a service court of a country to which the Visiting Forces Act, 1952, applies (see [1954] Crim.L.R. 558).

Dangerous Drugs

DANGEROUS DRUGS ACT, 1951 (RELAXATION) ORDER, 1954 (S.I. No. 1030): operative August 16, 1954.

Section 11 (1) of the Dangerous Drugs Act, 1951, which prohibits trading in, or the manufacturing for the purpose of trade of, any products obtained from any of the phenanthrene alkaloids of opium, no longer applies to methyldesomorphine or diacetyl-N-allylnormorphine.

DANGEROUS DRUGS ACT, 1951 (APPLICATION) ORDER, 1954 (S.I. No. 1029); DANGEROUS DRUGS REGULATIONS, 1954 (S.I. No. 1047): both operative August 16, 1954.

Part III of the Dangerous Drugs Act, 1951, which prohibits the import or export of drugs to which it applies except under licence and empowers the Secretary of State to make Regulations for the purpose of preventing the improper use of those drugs, is made to apply to methyldesomorphine, its salts and any substance containing any proportion of it. It ceases to apply to dextrorphan, dextromethorphan and N-allylnormorphine, their salts and any substance containing any proportion of them.

The Act of 1951 and the Dangerous Drugs Regulations, 1953 (S.I. No. 499) are amended accordingly. The Dangerous Drugs Act, 1951 (Application) Orders, 1953 (S.I. Nos. 1453, 1680) are revoked.

Food and Drugs

FOOD STANDARDS (SOFT DRINKS) (AMENDMENT) ORDER, 1954 (S.I. No. 1089): operative August 22, 1954.

Undiluted fruit juice, with or without added sugar, and such juice in a concentrated or frozen form is exempted from the provisions of the Order of 1953 (S.I. No. 1828), which prescribes the standards for soft drinks.

MINERAL OIL IN FOOD (AMENDMENT) ORDER, 1954 (S.I. No. 1044): operative August 8, 1954.

Citrus fruit containing not more than 0·1 part by weight of mineral oil per 100 parts by weight of citrus fruit is exempted from the provisions of the Order of 1949 (S.I. No. 1044), which prohibits the use of mineral oil in the composition or preparation of any food intended for sale for human consumption.

The Amendment Order of 1952 (S.I. No. 1822) is revoked and its provisions are replaced by the new Order, but without prejudice to proceedings in respect of contraventions of the Order of 1949 as amended thereby.

Hire Purchase

HIRE PURCHASE ACT, 1954 (2 & 3 Eliz. 2, c. 51): operative August 30, 1954.

The Act of 1938, sections 6 and 7 of which create offences, now applies to hire purchase and credit sale agreements relating to livestock where the hire purchase or total purchase price does not exceed £1,000 and any other such agreements where the price does not exceed £300.

Housing

HOUSING REPAIRS AND RENTS ACT, 1954 (2 & 3 Eliz. 2, c. 53): operative August 30, 1954.

This Act is intended to secure maintenance and repair of existing dwelling-houses and contains few penal provisions.

The power of local authorities under the Housing Act, 1936, s. 6, and other enactments to make by-laws to secure that houses shall be fit for human habitation is revoked, and different powers given to them. Under section 11, where it appears to a local authority that a house let in lodgings or occupied by members of more than one family is not fit accommodation for the number of persons living in it, the authority may serve on the person having control of the house a notice specifying the works which they consider necessary to render the premises reasonably suitable for occupation by such number of persons or requiring the number of persons accommodated to be limited. It is an offence to fail to comply with this notice. It is also an offence to fail to comply with a notice served under section 12, which provides that the local authority may serve on the occupier or any person having control or management of a house let in lodgings a notice stating the maximum number of persons who should sleep in a room at any one time. Such notice should draw attention to the effect of section 12 (3) which provides that a person who allows a room to be occupied in contravention of the notice or who allows so many people to be accommodated on the premises that it is necessary in order to comply with the notice for persons of opposite sexes over the age of twelve to sleep in the same room, is guilty of an offence. The penalty for an offence under section 11 or 12 is a fine not exceeding £5; if the offence continues after conviction the person is liable to further fines not exceeding £2 for every day on which it so continues. Section 15 of the Housing Act, 1936, which provides for appeals against notices and determines the day on which a notice shall become operative, and section 157, which concerns powers of entry, apply for the purposes of this section.

Criminal liability in respect of charging premiums under section 2 of the Landlord and Tenant (Rent Control) Act, 1949, is excluded in certain cases (section 39 (2)).

Any person who knowingly or recklessly makes a false statement in a declaration as to the repairs carried out on a house is liable to a fine not exceeding £30 (Schedule 2, para. 6).

Labour Laws

BAKING INDUSTRY (HOURS OF WORK) ACT, 1954 (2 & 3 Eliz. 2, c. 57): operative if the Minister of Labour and National Service so provides January 1, 1957, otherwise January 1, 1958.

The Act restricts night work in the baking industry and, subject to certain exceptions, prohibits the employment of bakery workers between 10 p.m. and 5 a.m. Section 5 imposes duties upon employers concerning the display of notices, keeping of records, etc. If any person is employed for such night work as is not permitted by the Act, the employer is guilty of an offence and is liable to a fine not exceeding £20; he is deemed to commit a separate offence in respect of each period of night work (s. 7 (1)). An employer who fails to display the notices or to keep the records required by section 5 is liable to a fine not exceeding £20 (s. 7 (2)). Any person who causes or allows false entries to be made in such records or produces or allows to be produced records which he knows to be false for the purposes of the Act is liable to a fine not exceeding £100 or to three months' imprisonment or both (s. 7 (3)). Where the Minister requires information under section 5 (3) an employer who fails to supply it is liable to a fine not exceeding £20; if he gives information which he knows to be false he is liable to a fine not exceeding £100 or to three months' imprisonment or both (s. 7 (4)).

Section 6 provides for the appointment of officers to secure the enforcement of the Act. In England and Wales such officers may institute proceedings for offences under the Act and may conduct such proceedings though not of counsel or solicitors (s. 6 (3)). Any person who obstructs such an officer in his duties or fails to comply with his requirements is liable to a fine not exceeding £20 (s. 7 (5)).

The Act of 1938 is repealed and the provisions of the Sunday Observance Act, 1677, cease to apply to the employment of bakery workers (s. 12).

London

LONDON TRAFFIC (PARKING PLACES) (CONSOLIDATION) (AMENDMENT) (NO. 2) REGULATIONS, 1954 (S.I. No. 1100): operative August 28, 1954.

The Regulations of 1950 (S.I. No. 1571) are amended. Parking places in Greenwich, Paddington and Wembley are revoked; the limits of certain parking places in Hoddesdon, Hornchurch and Westminster are altered, and the permitted times for waiting in certain roads in Guildford are extended; new parking places are appointed in Chigwell, Erith, Hampstead, Walthamstow and Westminster.

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 16 (S.I. No. 1099); No. 17 (S.I. No. 1124): both operative September 6, 1954.

Prescribed routes are detailed for Beal Road and York Road in the borough of Ilford between their junctions with Argyle Road and Cranbrook Road, and for Holland Park Avenue and Richmond Way in Hammersmith. Fines not exceeding £5 for a first offence and £10 for a subsequent offence may be imposed for contraventions.

Magistrates' Courts

PETTY SESSIONAL DIVISIONS (DURHAM) ORDER, 1954 (S.I. No. 1017): fully operative January 1, 1955.

The petty sessional divisions of Durham are altered. Certain divisions are abolished and the new divisions of Chester-le-Street, Durham, Hartlepool and Castle Eden, Houghton-le-Spring and Seaham, and Jarrow created. The areas of other divisions are redefined.

PETTY SESSIONAL DIVISIONS (SHROPSHIRE) (NO. 2) ORDER, 1954 (S.I. No. 1090): fully operative October 1, 1954.

The petty sessional divisions of Oswestry, Pimhill, Bridgnorth and Cleobury Mortimer are abolished and the new divisions of Oswestry and Bridgnorth created. The name of the division of Albrighton is altered to Mid-Shropshire. The areas of other divisions are redefined.

See JUSTICES' CLERKS AND ASSISTANTS (SUPERANNUATION) REGULATIONS, p. 804, below.

Pensions

LOCAL GOVERNMENT SUPERANNUATION (BENEFITS) REGULATIONS, 1954 (S.I. No. 1048); PROBATION OFFICERS AND CLERKS

(SUPERANNUATION) REGULATIONS, 1954 (S.I. No. 1049); JUSTICES' CLERKS AND ASSISTANTS (SUPERANNUATION) REGULATIONS, 1954 (S.I. No. 1050): all operative October 1, 1954.

The improved superannuation scheme provided for in the Local Government Superannuation Act, 1953, the details of which are contained in the Local Government Superannuation (Benefits) Regulations, is extended to apply to probation officers and clerks and justices' clerks and assistants.

The Ministry of Housing and Local Government has issued a Circular No. 56/54, dated September 3, 1954, and an Explanatory Memorandum concerning the Regulations.

Home Office Circular No. 163/1954, dated August 16, 1954, describes the main features of the Regulations as they affect probation officers and clerks.

Poisons

POISONS LIST (NO. 2) ORDER, 1954 (S.I. No. 1095); POISONS (NO. 2) RULES, 1954 (S.I. No. 1096): both operative September 16, 1954.

The Poisons List is amended. Laudexium and its salts are added to the list of poisons which may not be sold except by a person who is an authorised seller of poisons and the phosphorus compound sulphotepp is added to the list of poisons which may only be sold by a person who is an authorised seller of poisons or whose name is on a local authority's list. The Poisons Rules, 1952 (S.I. No. 2086) are amended to apply to these poisons.

A listed seller may sell the phosphorus compound mipafox when it is in the form of a cap on a stick or wire to persons other than those engaged in horticulture or agriculture. Preparations containing not more than one per cent. of anti-histamine substances for application in the nose or eye are exempted from the provisions of the Rules and of the Pharmacy and Poisons Act, 1933.

For penalties for infringement see section 24 of the Act of 1933.

Probation

See the PROBATION OFFICERS AND CLERKS (SUPERANNUATION) REGULATIONS, above.

Road Traffic

ROAD TRANSPORT LIGHTING ACT, 1953 (COMMENCEMENT NO. 1) ORDER, 1954 (S.I. No. 1104): fully operative October 1, 1956.

ROAD VEHICLES LIGHTING REGULATIONS, 1954 (S.I. No. 1105): operative October 1, 1954.

See hereon, p. 767, above.

Salmon and Freshwater Fisheries

LANCASHIRE RIVER BOARD (FISHERIES) ORDER, 1954 (S.I. No. 1132): operative August 24, 1954.

On its establishment the Lancashire River Board took over the duties of certain fishery boards (see S.I. 1950, No. 1601). Various provisions relating to the powers of those boards are consolidated and applied to the whole of the Lancashire River Board Area. These powers relate, *inter alia*, to the erection of fixed engines for salmon and migratory trout, obstructions and fish passes, by-laws, licences, eel traps and the close season for trout; certain modifications are made to the Salmon and Freshwater Fisheries Act, 1923, in its application to rivers within the Lancashire River Board Area.

Scotland

Animals

As to the slaughter of animals, see p. 798, above.

Courts

SUMMARY JURISDICTION (SCOTLAND) ACT, 1954 (2 & 3 Eliz. 2, c. 48): operative January 1, 1955.

A number of provisions relating to summary jurisdiction and procedure are consolidated. The Act repeals and replaces the whole of the Fine or Imprisonment (Scotland and Ireland) Act, 1899, and the Summary Jurisdiction (Scotland) Act, 1908, Amendment Act, 1909, and various sections of the Summary Jurisdiction (Scotland) Act, 1908, the Criminal Justice Administration Act, 1914, the Criminal Procedure (Scotland) Act, 1938, the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940, and the Criminal Justice (Scotland) Act, 1949.

Housing

HOUSING (REPAIRS AND RENTS) (SCOTLAND) ACT, 1954 (2 & 3 Eliz. 2, c. 50): operative August 30, 1954.

Section 30 (2) and Schedule 1, para. 6, contain provisions similar to those of section 39 (2) and Schedule 2, para. 6, of the English Act (see p. 801, above).

Letters to the Editor

Committal for Trial from the Court of the Coroner

Sir,

I respectfully agree with Mr. W. Bentley Purchase ([1954] Crim.L.R. 619) that the peculiar power possessed by the coroner's jury in cases of homicide should be retained—subject, however, to two small reservations. For although the committal from a coroner's court is equivalent to that from a magistrates', yet the procedure leading thereto is totally different and less fair in the following respects:

1. A person having been accused of homicide, it is the magistrates' purely judicial duty to enquire whether he or she be implicated. The coroner's task, on the other hand, is primarily executive and roving in character—consisting as it does in finding out who as well as what was the cause of death—albeit the coroner performs it in a judicial manner.

2. Magistrates may, whereas a coroner cannot, grant legal aid—the object of which is not to help offenders to escape liability, but merely to enable an individual who is without the necessary means to vindicate his rights as legitimately as one who possesses them.

3. The examination of the witnesses is not conducted by the magistrates, which enables them to take a more detached view of the proceedings.

4. Whereas the magistrates merely say: "We find there is a prima facie case to answer," the coroner's jury return a verdict (not necessarily unanimous) of "guilty"—and the fact that in law it means the same thing does not detract from the sinister sound of the pronouncement. For this is not a mere accusation, like a charge or an indictment, but a considered finding after an exhaustive hearing—including a reasoned summing up—yet a hearing, mark you, in which the suspect's representative has no opportunity of addressing the court. In my humble opinion, such a verdict must create prejudice, probably as much as Sir James Stephen says the presentment of a true bill by a grand jury used to do in earlier times. (Hist.Crim.Law, I, 274.)

5. In addition to informing the accused of his right to go into the witness-box or to make a statement from the dock, and of his liberty to abstain from doing either, the magistrates administer to him a full and solemn caution.

6. Such information and caution are given after the magistrates have decided that a prima facie case has been made out, so that the choice of the accused does not influence that decision. Whereas the coroner perforce gives the suspect the option before he sums up and the jury (over the composition of which, incidentally, the suspect has no say) retire to consider their verdict. Thus, in effect the suspect is practically blackmailed into giving sworn testimony.

Accordingly, would it not be advisable to make legal aid available in the coroner's court, and to couch his jury's verdict in much the same terms as are usually adopted by the examining justices in similar circumstances?

In conclusion, I feel it right to point out that by virtue of the power under consideration, the coroner's jury renders inestimable service in clearing the name of innocent victims of empty suspicion and wicked prejudice.

Yours faithfully,
JOSEPH YAHUDA,
Barrister-at-Law.

Temple

Dangerous and Careless Driving

Sir,

Letters relating to the above have been interesting, but the remedies put forward would require legislation and thereby a considerable delay in bringing them into effect.

May I suggest a far simpler method of helping to eradicate careless and dangerous driving, by making the guilty person feel an immediate and constant financial reminder of his or her bad driving.

This could be quite easily done by all Insurance Companies transacting motor business making it a condition of cover that the insured must make a declaration on the renewal of the Policy, setting out details of all convictions for offences under sections 11, 12 and 15 of the Road Traffic Act during the preceding period of cover, and that renewal of cover be only invited on the basis of an increased premium as per scales published from time to time.

These scales could provide for specified increases in premium depending upon the number of convictions during the preceding year of cover and such increases to remain operative (or a further increase if additional convictions recorded) until the insured has had a continuous period of 5 years free from any conviction under the said sections of the Road Traffic Act.

I am aware that the present practice is for Insurance Companies to subject policy holders with a bad claims record to "excess" conditions, but this does not operate to the detriment of the insured unless and until he or she is involved in a further accident for which he or she can be proved to be responsible.

Probably this has some deterrent effect but I am confident that the payment of increased premiums for a specified period would be a far greater deterrent, particularly if the increases were such as to make the comparison between ordinary premiums worth while.

In addition, such payment should, in time, provide a benefit for the careful and considerate driver as the income of the Companies would undoubtedly be considerably increased, whilst claims should decrease and thereby the Companies should find themselves in a position to subsidise the careful driver at the expense of the inconsiderate and potentially dangerous driver.

Yours faithfully,
LEX,
Solicitor.

Books and Periodicals

Reviews:

Psychiatry and the Law. By Manfred S. Guttmacher, M.D. and Henry Weihofen. New York: W. W. Norton & Co., Inc. 1952. viii and 461 and (cases cited) 3 and (index) 10 pp. ($8.50 net.)

A book, which does justice to the views of the psychiatrist and the lawyer and includes a careful consideration of the ever increasing volume of literature on crime, is a rarity. Perhaps a compromise between the claims of the two disciplines, the law and psychiatry, is easier to reach in the U.S.A., where clearly psychiatry in every-day life, and particularly in the law courts, is employed to an extent scarcely credible to a lawyer in England. A most pleasing characteristic of this book is the consistent use of other contributions to knowledge in this field, for example, an obvious reference is *The Criminal, the Judge and the Public* (New York, 1931) by Alexander and Staub, a psychiatrist and a lawyer, which is to a large extent superseded by the present work. The psychological classification of criminal behaviour made by Alexander and Staub is adopted and expounded by the present authors.

Psychiatry and the Law is a long and carefully reasoned work. It will probably be used for reference rather than general reading, since industry and application is necessarily required and such a book dealing with a field of knowledge that is "no-man's-land" will not readily find readers. It is, in fact, admirably suited for reference purposes so far as the lawyer in this country is concerned with psychiatric terms and diagnosis. The chapter headings are a simple guide, for example, the Psychoneurotic, the Manic Depressive and Schizophrenic Psychosis, the Psychopath. In each of these chapters the legal offences, likely to be committed by the persons concerned, are considered. Since the law under consideration is, for the most part, that pertaining in the U.S.A., the practical use of this book in England is limited to the more international discipline of psychiatry. Nevertheless the lines, along which the authors suggest that developments in the relation between the criminal and society should proceed, are of general interest. The authors tend to favour the restriction of the function of the judge once the prisoner has been found guilty. The treatment or punishment of the prisoner should be "vested in a tribunal of experts qualified to evaluate psychiatric, psychological and sociological data or, if the judge be allowed to continue to pass sentence, the sentence should be a wholly indeterminate one, under which the person should be held as long as necessary whether that be for a few days or for the rest of his life." This would largely obviate consideration of problems which at present arise in relation to the defence of insanity. The authors are of the opinion that, psychologically, it would be wiser to retain the sanctioning power of the judge on the grounds that "the wise and just father represented by the judge who punishes wrongdoers probably adds to the stability of society and to the average individual's feeling of security." This reasoning may be used to confine the methods, both legal and psychiatric, described in this book to the U.S.A., where the status of an authoritative male figure may play a less important role than in England and where the representative character of the judge is more important. In any case the authors can point to the Youth Correction Authority Act promulgated by the American Law Institute over a decade ago which has already been adopted with varying modifications by several States. The function of the Authority is the diagnosis of the cause, the treatment and direction of youthful offenders under 21 years of age. It is urged by some workers that there is no reason why the Act should apply only to youth. Nevertheless if, as the authors state "the seeds of mental disorders, of vice and crime, of alcoholism and perversion, of brutality, hatred, miserliness and innumerable other highly unlovable traits are sown in the first years of childhood," the problem of diagnoses and treatment of adults would certainly be much more complicated. The difficulties and complexities involved would raise the issue of "less eligibility," for, on what grounds should the obsessive compulsive neurotic criminals or those nearly related such as the kleptomaniac and pyromaniac obtain treatment, when the obsessive neurotics who have not taken to crime are unaided? The writers do not overlook this consideration but point to the need for preventive work and, above all, to the need for individualisation of treatment.

It is disconcerting to find the lawyer's point of view stated so well alongside the psychiatrist's. The fact that legal proceedings may be and in many cases almost certainly are harmful to mentally disturbed prisoners, who are fit to plead, has to be overlooked by the legal profession in its concern for freedom under the law. This leads to the general criticism made by the lawyer of the apparent disagreement on diagnostic matters amongst the psychiatrists. It may well be that in the medical profession "it has become almost a pretentious affectation on the part of many of its leaders to shun the court room" with the result that only too often the more competent psychiatrists do not appear as expert witnesses. The court proceedings are a well organised fight and, as Lord Simonds said in *Preston-Jones* v. *Preston-Jones* [1951] A.C. 391, "there is nothing to prevent a case becoming the battle ground of experts." A trial is not a scientific investigation nor is it a search for objective truth. The experts are therefore, as a rule, partisans. This book makes out a good case for the regulating of expert evidence by psychiatrists so that the psychiatrists' approach may at least approximate to some extent to the lawyers'.

The medical author of this book describes the various fields of psychoanalysis, psychiatry, and psychology and infers that psychiatry is psychoanalysis or psychology applied to the abnormal. He does not, however, answer the demand of the lawyer for certainty and exactness in terminology. Rather he raises doubts as to the general acceptance of any basic principles, having regard to the different schools of thought within the discipline of psychology. This is a common criticism but is certainly valid where the law is concerned. It may well be that "any psychological classification of criminals is based upon the perspective of the classifier," that personal judgment is always involved in classification and that "the legal evaluation, the practical disposition and, in all probability, even the treatment will not be affected by the label." Nevertheless, the lawyer in England would need considerable reassurance before he was prepared to accept a label which was not generally agreed upon.

This book brings out two facts very clearly. First, the great advance made in the understanding and classification of mental disorders by the psychiatrists. It seems as though the time is nearly ripe for the lawyer to accept some better understanding of the words "insane" and "lunatic" which have no meaning technically to the psychiatrist. Secondly, though frequent reference is made to the law in the U.S.A., it is astounding how unacquainted many of us are with its actual application. This is evidenced by the references in this book to the influence of the psychiatrist on the court both in criminal cases and, for example, in cases involving workmen's compensation, when the recovery of damages can be allowed for postraumatic hysteria (Arizona). The law-enforcing agencies are also of a markedly different stamp to the English police force. An extreme example of this difference is the editorial by J. Edgar Hoover, director of the Federal Bureau of Investigation, for the Journal of the American Medical Association, in which he urged physicians to report any of their patients whom they suspected of subscribing to subversive ideology.

This book is of very general interest and of a value which could only be enhanced by an English counterpart.

T. E. James.

Daly's Club Law. Fifth edition, by C. J. Collinge, B.A. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 1954. xxviii and 160 and (index) 14 pp. (18s. 6d. net.)

This is the fifth edition of "Daly's Club Law" and, since it is by the Chief Clerk of the Metropolitan Magistrates Courts, its accuracy and authority is unquestioned. It is a guide for laymen, as well as lawyers, and it is clearly essential for all those who are connected with clubs. Its chapters deal with different types of clubs, their management, the jurisdiction of the courts, the expulsion of members, the constitution, rules and management of clubs, the rights and liabilities of clubs and their members, the registration of clubs and their dissolution.

Criminal law is not very prominent in this branch of law. In a paragraph on the criminal liability of club members, we are reminded that a member can be convicted of stealing or embezzling the property of a members' club. The chapters on the registration of clubs and the sale of intoxicating liquor in them may concern the criminal lawyer.

It is interesting that it is questionable if it is legal to supply liquor to temporary members of a club when one club is closed for spring cleaning. The permitted hours during which intoxicating liquors can be sold are clearly summarised. There is also a short account of the law relating to betting, gaming and lotteries so far as it concerns clubs. I note with interest that the Commissioner of Police in the metropolitan police district may himself authorise a superintendent to enter, by force if necessary, any club suspected of being a common gaming house.

At the time of writing, there is a rumour that Parliament is soon to have the courage to consider the report of the Royal Commission on Betting and Lotteries, 1949–51 (Cmd. 8190). The Report of the Royal Commission on Licensing (1929–31) (Cmd. 3988) has also never been properly considered by Parliament. But both these reports contain many wise proposals and the law on either subject is certainly not so satisfactory that it cannot be improved. A new edition of this work may, therefore, soon be called for. In it, the editor might like to consider some references to Denis Lloyd's *Law Relating to Unincorporated Associations* (Sweet & Maxwell, 1938) and his article in *The Modern Law Review*, October 1949 (volume 12, No. 4, p. 409).

ROBERT S. W. POLLARD.

Current Legal Problems, 1954. Edited by G. W. Keeton and G. Schwarzenberger. London: Stevens & Sons, Ltd. 1954. vii and 227 and (tables and index) 9 pp. (32s. 6d. net.)

The Home Office. By Sir Frank Newsam, K.C.B., K.B.E., C.V.O., M.C. London: George Allen & Unwin, Ltd. 1954. 217 and (index) 7 pp. (15s. net).

In the volume of lectures published under the title *Current Legal Problems, 1954,* two will be of particular interest to criminal lawyers. In "Law and Order in Kenya," D. C. Hollond considers the problem of restoring peace to that colony; he refers to the absence of a preliminary inquiry before trial, discusses the grievance of unequal treatment before the courts and analyses the Kenyatta case.

The second item of interest, Professor Glanville Williams' lecture on "The Royal Commission and the Defence of Insanity," has already been considered in this *Review* (p. 657) and needs no further comment here.

The fact that the effective sentence for murder is now decided by the Home Secretary has been much criticised, and whilst the decision may be taken out of court, the principles which guide it are known and have been restated in *The Home Office* by Sir Frank Newsam.

In this book the author gives a factual account of the very varied work of his department. The two main sections are The Queen's Peace and The Royal Prerogative of Mercy and The Treatment of Offenders. In treading delicately to avoid controversy much is left unsaid, thus, whilst "the Home Secretary has no significant responsibility for prosecutions in individual cases," how far is he responsible for the periodic campaigns all over the country against some particular offence, *e.g.*, the publication of obscene libels?

But whilst the addition of controversial matter would undoubtedly have enlivened the book it is by no means dull. It is clearly written and, although compiled by team work, it is uniformly readable and interesting.

P. A.

Obscenity in Books. London: John Lane, The Bodley Head. 1954. 16 pp. (6d. net.)

This leaflet contains the decisions of the United States District Court and of the United States Court of Appeals in the case of *Ulysses* by James Joyce, 1933–4.

Books Received:

"Special Reasons." Second edition. By W. E. Blake Carn. London: Shaw & Sons, Ltd. 1954. 62 pp. (6s. net.)

Who Are the Guilty? By David Abrahamsen, M.D. London: Victor Gollancz, Ltd. 1954. xi and 309 and (appendix) 3 and (bibliography) 16 and (index) 10 pp. (13s. 6d. net.)

Handbuch Der Kriminalistik. Eighth and ninth parts of the Handbuchs für Untersuchungsrichter als System der Kriminalistik. By the late Dr. Hans Gross. Newly prepared and enlarged by Professor Dr. Ernst Seelig. Berlin: J. Schweitzer Verlag. 1954. 146 pp.

Articles:

Scots Law Times, 1954.
  Sociology of law and the jury, p. 141.

Solicitors' Journal, Vol. 98.
  Evidence-in-chief, p. 547.

Justice of the Peace, Vol. 118.
  Vehicles (Excise) Act, 1949—time limit for prosecutions, p. 510.
  The new law of false trade descriptions, p. 526.
  The unknown man (larceny), p. 542.
  Remand homes, p. 558.

Police Review, Vol. 62.
  Assaults, p. 584.
  The right to personal freedom (habeas corpus), pp. 598, 614.
  Larceny, pp. 600, 616, 632.
  Eavesdropping—ancient and modern (wireless telegraphy), p. 630.

Police Chronicle
  Films in the courts, August 13, 1954, p. 3.
  A new Firearms Act? August 27, 1954, p. 3.
  Legal fallacies—that a dog is entitled to one bite, September 3, 1954, p. 5.

THE

CRIMINAL LAW

REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Obscenity

On July 2, 1954, at the Central Criminal Court, Stable J. said to a jury: "Are we to take our literary standards as being the level of something that is suitable reading for the decently brought up young female aged fourteen. . . . A mass of literature—great literature—is wholly unsuitable for reading by the adolescent, but that does not mean that a publisher is guilty of a criminal offence for making those works available to the general public."

Later, on September 17, 1954, the Recorder said to a jury: "A book which might not affect the mind of an archbishop might well affect the mind of . . . a girl just budding into womanhood."

In 1900 *The Heptameron of Marguerite, Queen of Navarre* was saved from destruction as an obscene publication (*R.* v. *Thomson* (1900) 64 J.P. 456); on September 15, 1954, only after an appeal was *The Decameron* saved from such a fate (see p. 868, below).

These cases are sufficient reason for the article on p. 817.

Prison report

The Report of the Commissioners of Prisons for 1953 (Cmd. 9259) stresses the fall in the daily average population in prisons, after a rise in the two previous years. In April, 1954, the figure was 22,902. Consequently, the number of men sleeping three to a cell was reduced from 5,638 in December, 1952, to 4,575 in December, 1953.

Once again the Prison Commissioners mention the striking reduction in the numbers of young offenders, under 21 years of age, sentenced to imprisonment. Nevertheless the Commissioners do not regard the position as satisfactory when 328 boys, with no previous records, were sentenced to imprisonment. Some 600 received sentences of not more than three months. The opening of Goudhurst Detention Centre for those over 17 years should help to reduce the number of these deplorable short sentences.

Three more open prisons are completed. The Commissioners suggest that this may represent the boundary of expansion, because of the limit to types of suitable prisoners.

The privilege of home leave on parole now extends to all star prisoners. The results testify to the immense value of assisting prisoners to readjust themselves to family relationships, and to make arrangements for forthcoming employment. In no case did a prisoner fail to return from parole.

Summary trial of minor offences

The Home Secretary has appointed a Departmental Committee to consider the law relating to the trial of minor offences in magistrates' courts, and to report to him whether it should be amended. The committee's terms of reference require them to consider what changes, if any, should be made in the law with a view to saving the time of the courts and of witnesses without prejudicing the rights of the defendant. In particular, the committee are asked to consider whether the law should be altered :—(a) to permit a defendant to enter a plea of guilty without appearing before the court; (b) to permit of the easier proof of previous convictions where the defendant does not appear; and (c) to permit a monetary penalty, not in excess of an amount fixed by law, to be accepted in settlement of an admitted offence, without a hearing before a court, if both the prosecutor and the accused so wish. The chairman of the committee is Sir Reginald T. Sharpe, Q.C. The members of the committee are : Mr. A. Ll. Armitage, Fellow of Queens' College, Cambridge; Mr. Paul Bennett, V.C., M.C., a Metropolitan Magistrate; Sir John F. Ferguson, C.B.E., Chief Constable of Kent; Mr. N. W. Goodchild, O.B.E., Chief Constable of Wolverhampton; Mr. R. N. Howe, C.V.O., M.C., Deputy Commissioner of Police of the Metropolis; Lady Littlewood, Justice of the Peace and

Solicitor; Miss J. J. Nunn, Home Office; Mr. D. E. O'Neill, Ministry of Transport; Mr. J. F. Power, Justice of the Peace; and Mr. L. M. Pugh, Clerk to the Sheffield City Justices. The secretary is Mr. T. FitzGerald, Home Office, Whitehall.

Mock auctions

The Home Secretary has stated that the Government hold out no hope that they can find time for legislation on mock auctions.[1] However, private legislation affecting Brighton has been passed.[2]

Briefly this legislation provides for the registration with the Corporation of premises used for sale by auction. If it appears to the Corporation that the premises are "unsuitable for use for the purpose of conducting sales by auction" or they "have been used for the purpose of conducting otherwise than in good faith any sale by auction" or if the applicant has been convicted of any offence involving fraud or dishonesty registration may be refused. But before such refusal the applicant is to be given an opportunity to be heard and a person aggrieved by a decision may appeal to a court of summary jurisdiction. Penalties for contravention are a fine not exceeding £100 or imprisonment for not more than three months or both.

There are exemptions for sales at intervals of not less than six months when no substantial part of the property was brought on to the premises for the sale and for sales to assist the funds of voluntary organisations; sales by members of certain professional bodies are exempted.

A power to enter premises is given by reference to section 287 (1) (*a*) of the Public Health Act, 1936. There are provisions concerning offences by bodies corporate.

Police notes

The Home Secretary has issued to Chief Constables a circular (No. 172/54, dated August 30, 1954) concerning the preparation by police officers of notes of an interview. The circular quotes the judgment delivered by Byrne J. in *R.* v. *Bass* [1953] 1 Q.B. 680 at 686, and states that there is no objection to officers consulting together when preparing their notes of an interview. This topic is not free from controversy as can be seen from the article by a Clerk to the Justices on p. 833.

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[1] H. C. Debates, Vol. 531, cols. 89, 840, July 29, 1954.

[2] Brighton Corporation Act, 1954. The information contained here was obtained by courtesy of the Town Clerk, Brighton,

Driving whilst disqualified

In further proceedings in *Aichroth* v. *Cottee* [1954] Crim. L.R. 795, the London Sessions Appeals Committee decided that the appellant had acted in an emergency and that this was a " special reason " for not sending him to prison.

The Magistrates' Association

The Thirty-Fourth Annual Report of the Magistrates' Association, 1953–1954 contains a report of the business transacted at the meeting held in London on October 15 and 16, 1953. Sub-committees of the Council of the Association have prepared two interesting reports which are published in appendices to the main report; these are on Campsfield House Detention Centre and senior girls' approved schools.

Dominion cases

We include in this issue a selection of cases from the Dominions which we feel will be of interest to our readers although only of persuasive authority.

Judicial appointments

Sir David Maxwell Fyfe, Q.C., has been appointed Lord Chancellor in place of the Rt. Hon. Lord Simonds, who has resigned and has been appointed a Lord of Appeal in Ordinary in place of Lord Porter who has resigned. Lord Justice Somervell has been appointed a Lord of Appeal in Ordinary in place of the late Lord Asquith of Bishopstone. Mr. John Cyril Maude, Q.C., has been appointed an additional judge of the Mayor's and City of London Court in place of the late Judge Bass.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

Obscenity and the Law

By Norman St. John-Stevas, m.a., b.c.l., *Barrister-at-Law*

History

A series of recent prosecutions [1] of publishers and authors [2] has concentrated public attention on the relationship between law and literature. Subject to the law of libel a man has a right at common law to publish what he pleases. He must not defame the living, he is forbidden to stir up sedition,[3] he must not be blasphemous,[4] and he must not be obscene,[5] but provided he remains within these limits he is free of the law. Dicey caustically described this position as "the right to write or say anything which a jury consisting of twelve shopkeepers think it expedient should be said or written." (*The Law of the Constitution*, 9th ed., p. 246.) Whatever the truth of this, the essential of the law is the exclusion of the censorship of books prior to publication. Since the seventeenth century no authority has been empowered to licence books in England, and it is for the courts to decide after publication [6] whether the law has been infringed.

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[1] *R.* v. *Reiter* [1954] 2 Q.B. 16; [1954] Crim.L.R. 384; *R.* v. *Martin Secker and Warburg, Ltd.* [1954] 2 W.L.R. 1138; [1954] Crim.L.R. 593; *Thomson* v. *Chain Libraries* [1954] 1 W.L.R. 999; [1954] Crim.L.R. 551; *R.* v. *Hutchinson*, *The Times*, July 27, Sept. 13, 1954; *R.* v. *Self*, *The Times*, July 29, 1954; see also correspondence column, *The Times*, July, 1954; *R.* v. *Kaye*, *The Times*, Sept. 25, 1954; *R.* v. *Heinemann*, *The Times*, Oct. 18, 1954.

[2] Publishers are normally the only persons prosecuted but authors are sometimes indicted for "causing the book to be published." See case of James Hadley Chase jointly indicted with the publishers at the C.C.C. 1942 for his work *Miss Callaghan comes to Grief*. Both were fined. Booksellers of course are liable to prosecution for "publishing." They ought perhaps to have a defence provided they have not been "negligent."

[3] Sedition is defined by Stephen, Dig.Cr.L., 8th ed., art. 114. Like blasphemy it requires a criminal intent.

[4] For a full survey of this branch of the law see *History of the Crime of Blasphemy* by Dr. G. D. Nokes. Sweet & Maxwell, 1928.

[5] Obscenity is very difficult to define. It is a relative term connected with the reaction of the human mind to the objects of its experience. It has always been confined by the law to sexual matters. See suggested definition in *Dunlop* v. *U.S.*, 165 U.S. 486, 501.

[6] So Blackstone, 4 Comm. 151, 152: "The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications and not in freedom from censure for criminal matter when published."

Obscenity was not justiciable in the common law courts until the early part of the eighteenth century, being considered prior to this date a matter for the courts spiritual. Jurisdiction was assumed in *Curl's Case* in 1727 (2 Str. 788) when a prosecution was launched for the publication of an obscene book, *Venus in the Cloister or the Nun in her Smock*, counsel for the accused arguing strongly against this attempted extension of jurisdiction.[7] In his support he cited *Read's Case* (1708) 11 Mod. 142; Fortescue 98, 100, where the publication of an obscene book, *The Fifteen Plagues of a Maidenhead*, was held to be within the exclusive jurisdiction of the spiritual courts. For the prosecution the Attorney-General put forward a sweeping argument: "What I insist upon is that this is an offence at common law as it tends to corrupt the morals of the King's subjects, and is against the peace of the King. Peace includes good order and government and that peace may be broken in many instances without an actual force: (1) if it be an act against the constitution of civil government, (2) if it be against religion, (3) if against morality.

"I do not insist that every immoral act is indictable such as telling a lie or the like, but if it is destructive of morality in general, if it does or may affect all the King's subjects, then it is an offence of a publick nature. And upon this distinction it is, that particular acts of fornication are not punishable in the Temporal courts and bawdy houses are."

This argument was accepted by the court, but not without hesitation, especially on the part of Fortescue J., who distinguished *Sidley's Case* tentatively: "And in *Sir Charles Sidley's Case*[8] there was a force in throwing out bottles upon the people's heads." Nevertheless *Read's Case* was not followed: the word "libellus" was held to be governed by the epithet added to it: and the essential in *Sidley's Case* held to be not the force but the assertion of jurisdiction as "censor morum." Thus, the misdemeanour of "obscene libel" entered the law and has never since been seriously challenged.

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[7] This is one of the numerous examples of common law expansion into the criminal field at this period. In the seventeenth century the King's Bench claimed an undefined jurisdiction to punish wrongs and declared itself the successor of the abolished Star Chamber as *custos morum* of the King's subjects. *Sidley's Case* (1663) 1 Sid. 168. *Cf.* creation of crime of blasphemy. *Taylor* (1676) 1 Vent. 293. *Per* Lord Hale: "to reproach the Christian religion is to speak in subversion of law." *R.* v. *Woolston* (1729) 2 Str. 834.

[8] (1663) 1 Sid. 168: The report reads: "He was fined 2,000 mark, committed without bail for a week and bound to his good behaviour for a year, on his confession of information against him for shewing himself naked in a balkony and throwing down bottles (pist in) vi et armis among the people in Covent Garden, contra pacem and to the scandal of the government."

Common law

The two essentials of the misdemeanour are publication[9] and obscenity. Publication is a term very widely construed. Thus, in *R.* v. *Carlile* (1845) 1 Cox 229, it was held to be sufficient publication when an officer of a society for the suppression of vice purposely went to the prisoner's shop and asked to see some unbound prints which were of an obscene character. He was shown several in a back room and bought two in order to found the prosecution. Even wider was the interpretation in the case of *De Montalk* (1932) 23 Cr.App.R. 182, where the handing to the printer was held to be a sufficient act of publication.

As for obscenity, no attempt to give a legal definition was made until 1868, when in *R.* v. *Hicklin*[10] Cockburn C.J. laid down his famous test. "The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall." These words have been consistently followed by the courts,[11] being expressly approved by Lord Goddard in the *Reiter* case.[12] It follows from *Hicklin's* case that if the necessary and natural effect of a publication is prejudicial to public morality or decency, the motive of the defendant in publishing the obscene matter is immaterial.

The facts of the case were as follows: a society known as the Protestant Electoral Union, among whose objects was "to protest against those teachings and practices which are un-English, immoral and blasphemous (referring to the Church of Rome) and to maintain the protestantism of the Bible and the liberty of England," published a pamphlet "the Confessional Unmasked," exposing "the iniquity of the Confessional and the questions put to females in confession." About one-half of the pamphlet related to controversial questions which were not obscene, but the remainder of the pamphlet was obscene, relating to impure and filthy acts, words and ideas. The appellant, one Scott, did not keep or sell the pamphlets for purposes of gain nor to prejudice good morals, but kept and sold the pamphlets as a member of the Protestant Electoral Union to promote the objects of that society and to expose what he deemed to be the errors of the Church of Rome. Two magistrates, Hicklin and another, acting under the Obscene Publications Act, 1857 (see below) ordered a number of pamphlets to be seized and destroyed. On appeal the recorder quashed the order subject to the opinion of the Court of Queen's Bench. That court upheld the decision of the justices, stating specifically that if the inevitable effect of the publication was to injure public morality, the object of publication should not be considered.

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[9] Merely to have obscene writings in one's possession is no offence at common law. Thus it is no offence to keep obscene prints with intent to publish them, but it is an offence to "procure such prints with intent to publish," the distinction being that in the second case there has been an overt act towards publication, while in the first intention only is present.

[10] (1868) L.R. 3 Q.B. 360. This was a case brought under the 1857 Statute, but jurisdiction depends on the justices' opinion that a common law misdemeanour has been committed. It is thus an authority on the common law position.

[11] *e.g.*, *Steele* v. *Brannan* (1872) L.R. 7 C.P. 261; *R.* v. *Barraclough* [1906] 1 K.B. 201, C.C.R.

[12] [1954] 2 Q.B. 16, 19: "[The recorder] said, and this court entirely agrees with him, that the law is the same now as it was in 1868," *per* Goddard L.C.J.

Statute law

Statute has modified the common law but it is interesting to note that the principal statute, the Obscene Publications Act, 1857, which gave rise to the *Hicklin* case leaves the common law misdemeanour intact. It creates no new punishable offence [13] and is an example of preventive legislation. By its first section this Act empowers any metropolitan police magistrate or stipendiary, or any two justices, on complaint being made to them on oath that the complainant "has reason to believe or does believe" that any obscene books, papers, etc., are kept in any house or room, etc., within the jurisdiction, for the purpose of sale, distribution or exhibition for purposes of gain, and that one or more of these articles have been sold, then if they are satisfied that the publication would amount to a misdemeanour at common law,[14] "proper to be prosecuted as such," to give authority for the books to be seized and brought before them. They must then issue a summons calling upon the occupier to appear within seven days to show cause why the articles should not be destroyed. The magistrates have power to order their destruction immediately after the expiration of the time allowed for appeal, *i.e.*, seven days.

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[13] The Criminal Procedure Act, 1851, makes it a statutory misdemeanour, punishable by fine and imprisonment, to publicly sell or expose for public view any obscene book, print or picture.

[14] Once the justices have satisfied themselves that the books, etc., are obscene, the prosecution need not indicate at the hearing in what respect they allege that the publications are obscene. *Thomson* v. *Chain Libraries, Ltd.* [1954] 1 W.L.R. 999. The justification for this is said to be that the Act of 1857 "is a special code . . . ; provides a special procedure and makes an exception to the general rule"—*per* Hilbery J. in the *Thomson* case. *Cf. Cox* v. *Stinton* [1951] 2 K.B. 1021, where it was held the normal time limit for the issue of a summons, *i.e.*, six months from the commission of a summary offence does not

The Post Office Act of 1953 [15] makes it an offence to send indecent books or prints through the post, punishable on indictment by a maximum of twelve months' imprisonment or on summary conviction by a fine of £10. Further, it is now a summary offence [16] to publicly offer for sale or distribution or to exhibit to the public view any obscene books or other articles.

The Indecent Advertisements Act, 1889, created a further summary offence of indecent advertising punishable by a fine of 40s. or a month's imprisonment, while the Vagrancy Acts of 1824 (s. 4) and 1838 (s. 2) also punish indecent exposition summarily. The Venereal Disease Act, 1917 (s. 2 (1)), makes it an offence, subject to certain exceptions, to offer by public advertisement to treat any person for venereal disease or to give any advice in this connection. Finally, the Judicial Proceedings (Regulation of Reports) Act, 1926,[17] makes it an offence punishable with four months' imprisonment and/or a fine of £500, " to print or publish or cause or procure to be printed or published in relation to any judicial proceedings any indecent medical, surgical, or physiological details being details the publication of which would be calculated to injure public morals." [18]

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apply to proceedings under the Act. *Thomson's* case can be criticised on the grounds that it makes it very difficult for the party summoned to discharge the onus of proof on him to show cause why the articles should not be destroyed.

[15] s. 11 (1) (*b*) (*c*) replacing the Post Office Act, 1908, s. 63 (1) (*b*).

[16] See the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 54 (12); the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28.

[17] This is in accordance with common law view. At common law the provisions relating to fair comment, privilege and justification, applicable to defamatory libel do not extend to libels of an obscene character. Thus publication of indecent matter is not protected by proof that it is a fair and accurate report of the proceedings of a court of justice. See *R.* v. *Carlile* (1819) 3 B. & Ad. 167; *R.* v. *Creevey* (1813) M. & S. 273; *Steele* v. *Brannan* (1872) L.R. 7 C.P. 271.

[18] A further statutory change was introduced by the Magistrates' Courts Act, 1952, s. 87 and s. 19 of Sched. I. If the accused wishes: is over seventeen: the offence not serious: and the court consents, the misdemeanour is triable summarily, maximum penalty being a fine and six months' imprisonment.

Problems of the Law

The common law and statutory position has now been briefly outlined but on a number of important questions the law is by no means certain and these will now be discussed.

Intention

First, is a criminal intention necessary to establish the common law misdemeanour? In *Hicklin's* case counsel for the appellant maintained that it was, and that if this intention were not established the justices would have no jurisdiction under the Obscene Publications Act, 1857. Lord Kenyon was quoted: "It is a principle of natural justice and our law that *actus non facit reum nisi mens sit rea.* The intent and the act must both concur to constitute the crime." Counsel claimed that the object in publishing was relevant to the charge of obscenity and quoted in his support not a law report but Dr. Johnson's *Lives of the English Poets.* Savage, the poet, had been prosecuted for his *Progress of a Divine*, being accused of publishing an obscene libel: "It was urged in his defence that obscenity was criminal when it was intended to promote the practice of vice: but that Mr. Savage had only introduced obscene ideas with the view of exposing them to detestation and of amending the age by showing the deformity of wickedness. This plea was admitted and Sir Philip Yorke who then presided in that court dismissed the information with encomiums upon the purity and excellence of Mr. Savage's writings." Counsel also claimed Milton as a supporter. A more impressive authority was Lord Eldon in *Murray* v. *Benbow*,[19] who also treated the object of publication as relevant.

This argument did not prevail, and Cockburn C.J. expressly rejected it. "I think that if there be an infraction of the law the intention to break the law must be inferred, and the criminal character of the publication is not affected or qualified by there being some ulterior object in view (which is the immediate and primary object of the parties) of a different and an honest character." He then laid down his famous test and pointed out that once the misdemeanour had been established a good motive was irrelevant. Blackburn J. agreed and quoted Lord Ellenborough in *R.* v. *Dixon* (1814) 3 M. & S. at p. 15: "It is a universal principle that when a man is charged with doing an act" (that is, a wrongful act without legal justification) "of which the probable consequence may be highly injurious, the intention is an inference of law arising from that act." He then added himself: "And although the appellant may have had another object in view he must be taken to have intended that which is the natural consequence of the act."

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[19] (1822) Jac. 474n. alluding to *Paradise Lost*: "It appears to me that the great object of the author was to promote the cause of Christianity." Lord Eldon knew more about the law than literature.

Some kind of intention is then necessary for the misdemeanour to be established, but unfortunately the slovenly terminology in Cockburn C.J.'s judgment only obscures the question. He uses "motive," "intention" and "specific intention" as though they were synonymous and interchangeable terms. "Motive," Professor Glanville Williams has pointed out (*The Criminal Law*, The General Part (1953), §§ 22, 27, 228) has two meanings, first the emotion prompting an act, and secondly, the ulterior intention with which an intentional act is done. Intention relates to the means; motive to the end. In this second sense "motive" is clearly relevant as to whether a particular crime has been committed just as it is irrelevant in the first sense. "Intention" itself may be defined as full advertence in the mind of the accused to his conduct, *i.e.*, the actual voluntary act; "motive" or ulterior intention, full advertence in the mind of the accused to the consequences of his conduct together with a desire for those consequences. Is such ulterior intention necessary for a common law misdemeanour? It is submitted that subject to the qualification of "recklessness" [20] the answer must be Yes. Negligence does not ground liability at common law.[20a] In *Hicklin's* case this point was never clearly discussed, and although the passage quoted above from Cockburn C.J.'s judgment appears to reject intention altogether, the same cannot be said of Blackburn J.'s judgment, where intention is explicitly held to be necessary, albeit an objective test of "intending natural consequences" is applied. It must, however, be remembered that Blackburn J. is here applying a presumption which is not a rule of law but a question of fact, and as such rebuttable. Thus, Cave J. has said: " In order to make out the offence of speaking seditious words, there must be a criminal intent upon the part of the accused, they must be words spoken with a seditious intent: and although it is a good working rule to say that a man must be taken to intend the natural consequences of his acts, yet, if it is shown from other circumstances that he did not actually intend them, I do not see how you can ask a jury to act upon what has become a legal fiction."[21] Again, Denning L.J. has said,[21a] in reference to this presumption: " There is no 'must' about it; it is only 'may.' The presumption of intention is not a proposition of law but a proposition of ordinary good sense."

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[20] Recklessness is foresight of consequences without desire for them to occur. "There are only two states of mind which constitute *mens rea*, and they are intention and recklessness": Kenny's *Outlines of Criminal Law*, 16th ed., § 25. *Contra* this view, see replies of judges to questions put in 1792 by House of Lords. "A criminal intention is no part of the definition of libel at common law": 22 St.Tr. 296–304. Nevertheless, Fox's Libel Act became law; and see Erskine's famous argument in *R.* v. *Shipley* (1783) 21 St.Tr. 961, as to law before the Act.

[20a] The two exceptions to this rule are the offences of "non repair of highways" and "public nuisance." *Contra* this view see Glanville Williams, *Criminal Law*, The General Part, § 29, where he maintains both manslaughter and murder can be crimes of "negligence." But see Turner. *Modern Approach to Criminal Law*, pp. 209 *et seq.*

It is submitted then that, despite the confusion created by *Hicklin's* case, intention is an intrinsic part of the misdemeanour of obscene libel; that an objective " natural consequences " test is applied; but that this presumption can be rebutted by proof of other circumstances, amongst which may be included " ulterior intention." *Hicklin's* case is confused because of the circumstances under which the prosecution took place. Scott was prosecuted under the Obscene Publications Act, 1857, which created no new offence. Rules governing statutory interpretation are not necessarily identical with common law rules, and the confusion may well have been caused by failing to keep this distinction in mind.

Support for the view that intent is necessary for the offence of obscene libel comes also from the form of drafting employed in the old indictment. The practice of alleging an intent to corrupt public morals prevailed at least until 1906. In *R.* v. *Barraclough* [1906] 1 K.B. 201, an indictment was upheld, although no intent was alleged, but Alverstone C.J. said expressly: " There is no doubt that an indictment for obscene libel should be so drawn as to include the ordinary averment as to the libel being to the prejudice of public morals." In *R.* v. *De Montalk* (1932) 23 Cr.App.R. 182, the point was raised by St. John Hutchinson for the appellant, but Lord Hewart, in dismissing the appeal, made no reference to this point. The headnote of this case is therefore erroneous, since it denies that intention is necessary.

A further point in favour of this view which has not been raised in the cases is the effect of Fox's Libel Act, 1792, on obscene libel. This Act states : " Whereas doubts have arisen whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the King and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict upon the whole matter in issue . . . be it enacted . . . that on every such trial the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information: and shall not be required or directed by the court or judge before whom such indictment or information shall be tried to find the defendant or defendants guilty merely on the proof of the publication by such defendant, etc."[22]

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[21] *Burns* (1886) 16 Cox 355 at 364. See also *R.* v. *Harvey* (1823) 2 B. & C. 257, 264. *Cf.* (1820) 33 Harvard L.R. 633.

[21a] *Hosegood* v. *Hosegood* (1950) 1 T.L.R. 735.

The effect of the Act on seditious libel was to require an illegal intention on the part of the publisher. The Act does not say so in so many words, but this is the effect of leaving the whole matter in issue to the jury. As Stephen says: " The general principle is that a plea of not guilty in a criminal case puts in issue all the material averments in the indictment, but the Libel Act does not say whether the averments as to the specific intentions of the defendant in such cases are or are not material. It no doubt, however, assumes them to be so, and the law has ever since been administered upon the supposition that they are " (Stephen, *op. cit.*, p. 359). Thus, in *Burdett's Case* (1820) 4 B. & A. 95, the judge had directed the jury as follows, and was upheld by the whole court on appeal : " With respect to whether this was a libel I told the jury that the question whether it was published with the intention alleged in the information was peculiarly for their consideration: but I added that this intention was to be collected from the paper itself, unless the import of the paper were explained by the mode of publication or any other circumstances " (4 B. & A. at p. 120). This is precisely the point which has been made earlier with regard to the intention necessary in obscene libel. Why, in view of the express words of the Act " any libel," and the similar public character of obscene and seditious libel should any distinction be made between the two?

The argument becomes even stronger if one looks at the third member of the trilogy, blasphemous libel. A series of cases decided in the ninteenth century shows that intention after Fox's Act was considered an essential part of the offence.[23] Whatever the law before the Act there can be no doubt that after the Act an intention must be shown in all three forms of libel.

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[22] For a full discussion of the effect of Fox's Libel Act, see Stephen, *History of the Criminal Law*, Vol. II (1883), pp. 343–5.

Three views on these facts may be taken of *Hicklin's* case. First, that if it excludes intention it was wrongly decided. Secondly, that it was rightly decided, and Cockburn C.J.'s dictum was *obiter*. Thirdly, that there is nothing incompatible between the Cockburn judgment and the requirement of intention. This last view has received modern support. Thus, in a recent Canadian case,[24] the test adopted and approved was that of *Hicklin's* case. But in the course of his judgment Lajure J. of the Quebec Court expressly stated that since the intention was to create an artistic background and not an immoral scene, there was no tendency to depravity within the meaning of the *Hicklin* case. Again, in the *Secker and Warburg* case, Stable J., having approved the *Hicklin* test, says: "Then the book goes on to describe the pitfalls into which the unhappy adolescent, without knowledge or experience, without the map and the compass, and without the guiding hand of a wise parent or the example of a well-ordered, decent home, stumbles, and you will have to consider whether in this the author was *pursuing an honest purpose*[25] and an honest thread of thought, or whether that was all just a bit of camouflage to render the crudity, the sex of the book, sufficiently wrapped up to pass the critical standard of the Director of Public Prosecutions." Either this is a misdirection or the point of view put forward in this article represents the true state of the law.

Defences

The second question, connected with that of intention, concerns the defences that may be raised to a charge of obscene libel. It has been suggested that a plea of publication for the public good would provide a defence to such a charge.

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[23] *R.* v. *Eaton* (1812) 31 St.Tr. 927, at 950; *R.* v. *Hone* (1817), *The Three Trials of William Hone*, London, 1818; *R.* v. *Russell* (1819); *R.* v. *Carlile* (1819) 4 St.Tr.(N.S.) 1423, at 1425; 1 St.Tr.(N.S.) 1387, at 1390; *R.* v. *Taylor* (1827); *R.* v. *Hetherington* (1840) 4 St.Tr.(N.S.) 563, at 593; *R.* v. *Moxon* (1841) 4 St.Tr.(N.S.) 693; *R.* v. *Holyoake* (1842) 4 St.Tr.(N.S.) 1381. The whole point re blasphemous libel is fully discussed in Nokes, *History of Blasphemy*, pp. 79–82, 91–8.

[24] *Conway* v. *The King* [1944] 2 D.L.R. 530, a prosecution for staging a theatrical performance which had for its background actresses nude from the waist up who tried to create the impression of living statues.

[25] Italics mine.

There is no judicial authority on this point but Stephen thought such a defence to be part of the law. "A person is justified in exhibiting disgusting objects, or publishing obscene books, papers, writings, prints, pictures, drawings or other representations, if their exhibition or publication is for the public good, as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature or art, or other objects of general interest; but the justification ceases if the publication is made in such a manner, to such an extent or under such circumstances as to exceed what the public good requires in regard to the particular matter published" (*Digest of the Criminal Law*, 9th ed. 173).

Stephen's view was expressly approved by the recorder in his summing-up at the Central Criminal Court in *De Montalk's* case (1932) 23 Cr.App.R. 182, but Lord Hewart in his very brief judgment made no comment. It is difficult to see how medical, literary or artistic progress can be maintained if a defence of this sort is not open to writers and artists.[26] Clearly a book with medical diagrams might corrupt the mind of a person into whose hands it fell, but such a book might well have intrinsic value as a work of learning. The same argument applies to the classics and to works of a religious character, *e.g.*, a textbook of moral theology. In *Hicklin's* case Blackburn J. referred to the words in the Obscene Publications Act, 1857, that the justices may order the destruction of books if they are satisfied that "publication would amount to a misdemeanour, proper to be prosecuted as such." "I think," he said, "with regard to the last clause, that the object of the legislature was to guard against the vexatious prosecution of publishers of old and recognised works in which there may be some obscene or mischievous matter." If this clause does not have some such meaning it is difficult to see why it was inserted. At the same time there seems no reason to give it the narrow interpretation of Blackburn J. It is equally possible that the clause has some reference to the common law position as outlined by Stephen.

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[26] The Select Committee on "lotteries and indecent advertisements" appointed from both houses of Parliament in 1908 recommended that in their proposed Act, codifying the law *re* obscenity, a clause should be inserted "to exempt from operation of the Act any book of literary merit or reputation or any genuine work of art." "A magistrate would be enabled to take into consideration all the circumstances of the case and would be free from a supposed obligation merely to decide upon the decency or indecency of the particular literary or artistic work brought to his notice": Parliamentary Papers, 1908, 275.

Testing the character of the book

The third point of controversy is whether a book can be held obscene because of isolated passages or is the true test of obscenity the whole character of the work? If the narrow view of the *Hicklin* formula is taken then undoubtedly a book with only one obscene passage could be held obscene. Equally if it is conceded that intention is necessary to prove the offence the general character of the book must be examined. Judicial authority is non-committal. In *Paget Publications* v. *Watson* [1952] 1 All E.R. 1256, the magistrate found that only the covers of a book were obscene but nevertheless held that he had jurisdiction under the 1857 Act to order its destruction. Lord Goddard upheld him and pronounced the point unarguable. "It is not necessary," he said, "to show that a publication is obscene on every page." He did not, however, discuss the point of whether it is individual passages or general character which renders a book obscene.[27] Support for the "isolated passages" view comes from Massachusetts where in *C.W.* v. *Friede* (1930) 271 Mass. 318, the judge said: "It makes no difference what is the object in writing this book or what was its whole tone, if these passages that are complained of, the language that is set out in the bill of indictment is in your mind obscene, impure, indecent and manifestly tending to the corruption of youth, then you must find a verdict of guilty." This test has, however, been rejected by the United States Appeals Court (in *U.S.* v. *One Book entitled Ulysses* (72 F.(2nd) 705 (2nd Cir. 1934)), where Augustus N. Hand said: "While any construction of the statute that will fit all cases is difficult, we believe that a proper test of whether a book is obscene is its dominant effect." "We think the effect of the book as a whole is the test."

Evidence

The final question concerns evidence. How far are books other than those made the subject of the indictment relevant in determining the obscenity of the latter? In the *Reiter* case [1954] 2 W.L.R. 638, Lord Goddard quoted with approval the judgment of the Lord Justice-General in the Scottish case of *Galletly* v. *Laird*, 1953 S.C.(J.) 16. He commended the following passage: "The magistrate disallowed cross-examination by the complainer's solicitor and positive evidence tendered for the defence designed to show that books other than those referred to in the complaint circulated freely in Paisley and were available in the local public library, the suggestion apparently being that these other books were not materially different in character from those complained of. I consider that the magistrate's ruling was right. The character of other books is a collateral issue, the exploration of which would be endless and futile. If the books produced by the prosecution are indecent or obscene, their quality in that respect cannot be made any better by examining other books or listening to the opinions of other people with regard to these other books." Since obscenity is essentially a relative matter—what is considered obscene at one time or place not being necessarily so at another—this statement is open to criticism. Furthermore it was held in *McGowan* v. *Langmuir*, 1931 J.C. 10, that the circumstances in which certain photographs were kept for sale, the character of the trade carried on in the particular shop, etc., were relevant in determining the question of obscenity.[27a] Again in *R.* v. *Thomson* (1900) 64 J.P. 456, the Common Serjeant said: "Whilst the question of the intention with which the book was sold is part of the indictment, it is impossible to say that the holding out and offering of other books may not bear on that intent. If the defendant sold other books whose titles go to suggest that they are indecent it is some evidence to show that she sold this book with the intention alleged in the indictment and not accidentally. I cannot exclude the evidence."

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[27] The judgment may not have been uninfluenced by Lord Goddard saying *obiter* that if he were called upon he would decide the question of the obscenity of the rest of the book differently from the magistrate.

[27a] Circumstances of sale are apparently held relevant because of the passage "those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall" in the Cockburn dictum.

In *Galletly* v. *Laird*, 1953 S.C.J. 16, circumstances of sale were again held relevant. The prosecution must establish that "such book or picture is being indiscriminately exhibited or circulated or offered for sale in such circumstances as to justify the inference that it is likely to fall, and perhaps intended to fall into the hands of persons liable to be so corrupted."

In *The Times* of October 12, the stipendiary magistrate at Leeds is reported as uttering the following extraordinary statement: "A work of art like *The Decameron* was not considered obscene but if it was sold at sixpence halfpenny on a bookstall to attract customers it could be well so." The inference is that the lower income groups are more open to corruption than their better off brethren. A similar argument was put forward for the prosecution in *The Decameron* case (see below, p. 868).

The corruptibility of any group of people is too subjective a matter for a court even to attempt to assess. Circumstances of sale pertain to the question of the intention of the bookseller, but this is excluded under the present law. Were there an offence of "holding out pornographic or obscene books for sale" the circumstances would of course be relevant.

With so many points in doubt the law cannot be considered satisfactory, and the question may well be asked whether there should be a law against obscenity at all. To answer this query the complex social issues underlying the law must be briefly examined.

THE SOCIAL ASPECT OF OBSCENITY

Censorship or licence

There are those who think that a law against obscenity constitutes a censorship of an intolerable kind. Thus G. S. Scott (*Into Whose Hands*, Gerald G. Swan, 1945, p. 217) writes: " The abolition of censorship in every form and degree would appear to be the only position that the advocate of freedom for literature and art can logically take up." It is said that such a law cripples creative thought and work, restricts the artist in his task of expressing his vision of the truth, and gives to matters purely conventional the protection proper to fundamental moral truths.

Further, it is argued, a legal test for obscenity is an impossibility. Who can gauge the effect of a book on the mind of an individual? A book harmful to X may very well be neutral or even beneficial to Y. Again direct evidence of the corrupting effect of a book is never available and must remain largely a matter of conjecture. Once obscenity is punished, then literature must suffer since a dividing line cannot be drawn between the two. To attempt to confine the imponderables and subtleties of literary merit within the Procrustean bed of a legal formula is little better than futility.

Even if a theoretical case for suppression of obscenity can be established the supporters of this view would reject it on practical grounds. Only a fraction of the obscene books on the market are ever made the subject of a prosecution, and if they are, the accompanying publicity results in a vastly increased sale. The attraction of the tabooed is irresistible.

Finally, the point is made that far from being aphrodisiac obscene books are a safety valve protecting society from crime and outrage. Havelock Ellis held this view, asserting that the conditions of modern society require relief from oppressive conventions in much the same way as children need fairy stories. The average reader of pornography, it is said, is not socially undesirable, but quite harmless. The real sensualists are not content with words.

Supporters of legal intervention on the other hand base their case on the need to protect society and especially youth from corruption.[28] Better to lose some books of literary merit than have the nation corrupted. Art they argue has a social purpose and the law cannot be expected to countenance the doctrine of art for art's sake.

This divergence of view is not artificial but represents a real clash of social interests. An art that is unfree is unworthy of the name, but an artist is not working in a vacuum. Art may or may not have a social purpose, but it certainly has social implications. To pose the problem as a conflict between an individualist literary coterie and the mass of the nation is to misrepresent it. Not only the artist but society as a whole has an interest in literature and painting, just as it has an interest in not being needlessly exposed to corrupting influences. The law must not hold up artistic progress, but it cannot allow the bookstalls of the country to be flooded with what is easily recognisable as disgusting and indecent writing. The great difficulty arises in drafting a legal test that will distinguish between the two. If we look at the English practice with its slavish and narrow interpretation of the Cockburn formula it cannot be denied that in this respect the law has failed.[29]

A solution: the American approach

The best solution would be a comprehensive statute revising and codifying this branch of the law,[30] but pending such legislation can a reasonable alternative be found for the *Hicklin* test? On this point the American cases provide some valuable guidance.

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[28] Thus Lord Campbell in reference to the 1857 Act for which he was responsible: "the measure was intended to apply exclusively to works written for the single purpose of corrupting the morals of youth and of a nature calculated to shock the common feelings of decency in a well regulated mind," 146 Hansard Parl. Debs. (3rd series, 1857), 327 *et seq.*

[29] Among the books caught by the Cockburn formula have been: 1888, Emile Zola's *La Terre*; 1898, Havelock Ellis—*Sexual Inversion*; 1915, D. H. Lawrence—*The Rainbow*; 1928, Radclyffe Hall—*The Well of Loneliness*; 1929, D. H. Lawrence—*12 Poems*; 1954, *The Decameron of Boccaccio* (July 29, Swindon Magistrates' Court) (this decision was reversed on appeal to quarter sessions, September 15, 1954).

[30] A special jury of literary celebrities and critics has been suggested but this would probably raise many complicated problems without solving the basic one. In the "Ulysses" case both parties waived their right to jury trial and the point was taken by the judge alone. He commends this procedure but it would probably not be acceptable in England. The standard to be applied after all is not that of the individual juryman but that of "the reasonable man."

The successful attempt made to lift the ban imposed in the United States on James Joyce's *Ulysses* resulted in two illuminating judgments, one delivered by Woolsey J. in the District Court and the other by Augustus N. Hand J. in the Court of Appeals (*U.S.* v. *One Book entitled Ulysses*). In each court the book was looked at and read as a whole. At one point Woolsey J. said: "In many places it seems to me to be disgusting, but although it contains, as I have mentioned above, many words usually considered dirty, I have not found anything that I consider to be dirt for dirt's sake. Each word of the book contributes like a bit of mosaic to the detail of the picture which Joyce is seeking to construct for his readers." The definitive statement of the law comes, however, in the judgment of Augustus N. Hand. Two passages are worth quoting in full.

"It is settled, at least so far as this court is concerned, that works of physiology, medicine, science and sex instruction are not within the statute, though to some extent and among some persons they may tend to promote lustful thoughts (*U.S.* v. *Bennet*, 39 Fed. (2nd) 564). We think the same immunity should apply to literature as to science, where the presentation when viewed objectively is sincere and the erotic matter is not introduced to promote lust and does not furnish the dominant note of the publication. The question in each case is whether a publication, taken as a whole, has a libidinous effect. The book before us has such portentous length, is written with such evident truthfulness in its depiction of certain types of humanity, and is so little erotic in its resultant, that it does not fall within the forbidden class."

And later he said: "It is true that the motive of an author to promote good morals is not the test of whether a book is obscene and it may also be true that the applicability of the statute does not depend on the persons to whom a publication is likely to be distributed. The importation of obscene books is prohibited generally and no provision is made permitting such importation because of the character of those to whom they are sold. While any construction of the statute that will fit all cases is difficult, we believe that the proper test of whether a given book is obscene is its dominant effect. In applying this test, relevancy of the objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past if it is ancient, are persuasive pieces of evidence, for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content."

A dissenting judgment was delivered by Manton J. in which he approved the narrow interpretation of the *Hicklin* test: "No matter what may be said on the side of letters, the effect on the community can and must be the sole determining factor."

It is submitted with respect that the time for abandoning the *Hicklin* formula is long overdue and that in the judgment of Judge Hand one may find not only the traditional view of the common law, but also that most suited to the needs of modern times.

A Police Officer's Notes

By R. Kenneth Cooke, O.B.E.

Solicitor, Clerk to the Justices, Prescot and St. Helens' (County) Petty Sessional Divisions

Where two police officers are engaged in the same case and their notes, and therefore their subsequent evidence, are almost identical, the officers are frequently attacked by the defending advocate on the ground that they must have prepared their notes in collaboration with one another.

It is said that notes prepared in this way are worthless, and indeed improper, because they do not represent one man's memory and personal evidence upon a matter, but rather a concerted effort on the part of both of the officers, one inevitably helping the other.

Where the prosecution and defence differ as to the details of an occurrence, such as, for example, the accused's reply to a question, or to the charge, it has been suggested that if officers "put their heads together" when preparing their notes a great hardship can fall upon the defence, because, instead of possibly three versions of the actual words used, the result will be two police officers ranged solidly upon one side of the fence, and the accused upon the other.

At these times the accused is usually interviewed alone, and it is obvious that the courts tend to believe the prosecution upon whose side the weight of evidence lies.

To meet this objection, which some of us have thought to be a very real one, the general orders of the Metropolitan Police and of some of the county police forces provide that notes shall be written up by each officer separately and independently without consultation.

This has been completely demolished by Byrne J. in the case of *R.* v. *Bass* [1953] 1 Q.B. 680, who suggests that it is quite proper for police officers to collaborate in arriving at a correct version of what was said.

In giving the judgment of the Court of Criminal Appeal Byrne J. said: "With regard to the second ground of appeal, the matter stood in this way. The officers' notes were almost identical. They were not made at the time of the interview. One officer made his notes after the appellant had been charged, and the other officer made his an hour later. . . . This court has observed that police officers nearly always deny that they have collaborated in the making of notes, and we cannot help wondering why they are the only class of society who do not collaborate in such a matter. It seems to us that nothing could be more natural or proper when two persons who have been present at an interview with a third person than that they should afterwards make sure that they have a correct version of what was said. Collaboration would appear to be a better explanation of almost identical notes than the possession of a superhuman memory."

The learned judge's observations related to the making of notes in a case in which two Metropolitan police officers questioned the appellant at a police station.

The Home Office has recently circularised all Chief Officers of Police with this judgment, suggesting that orders, and practice, should now be reviewed, with a view to making it clear that there is no objection to officers who are present at the same interview consulting together when preparing their notes of the interview. The circular points out that the judgment is confined to interviews, and does not contain any authoritative guidance in respect of notes of observations in other circumstances.

A copy of this circular has been sent to all Clerks of the Peace and Clerks to Justices.

We must, of course, administer the law as it is handed down to us, and where defending advocates attack this type of evidence in future, they must be referred to the judgment given by Byrne J. I hope, however, we hear more of this matter elsewhere, as the observations of the court can lead to difficulty and possible injustice.

Where collaboration, or consultation to quote the Home Office circular, is allowed, and police officers privately disagree upon some detail as they write up their notes together, a detail which may seem small in itself but which may be of paramount importance to the defence, it is obvious, human nature being what it is, that the version of either the more senior officer, or the one with the more dominant personality, will become the version of them all, and will go down into the notebooks to be subsequently translated into evidence in the witness box.

At a trial, if the accused disagrees, possibly himself adopting the version of an officer who was overruled by his colleague, it may be said, or at least thought, that as the officers are firm in their version of the matter, at the best the accused is mistaken, and at the worst he is lying. It is natural to speculate that if the accused be lying about a matter upon which the court can check, are there any other matters upon which he is lying where the court has no means of checking?

Such a line of thought could put the accused in an unfavourable light for the remainder of the case, and might well be the small featherweight of evidence which turns the scale from reasonable doubt to that certainty which justifies a conviction.

It is the first duty of the court, not of the witnesses who must speak only as to the facts within their own personal knowledge, to sift all the evidence and get to the truth of the matter.

If this fundamental principle is to remain inviolate the court must receive all the independent versions, however they may disagree in detail, and itself decide which one is to be preferred. It should be no part of the duty of police officers to decide that issue before the court even sits.

It is to be hoped that this particular point will not be allowed to lie where it is.

Aspects of Forensic Science

By D. Noel Jones, m.sc., f.l.s., m.i.biol.,
Senior Biologist, North Western Forensic Science Laboratory

Textile Fibres

The identification and comparison of fibres provide the forensic scientist with a great deal of work. The numbers of new artificial fibres continually being introduced by the textile industry have to be examined, their characteristics noted, and methods of identification tested. The greater the variety of fibres in being, however, the better the value of the evidence that may be provided in certain cases.

The fibres examined come, in the main, from clothing, but may be from other sources such as carpets, upholstery, sacking and the like. The methods of comparison are twofold : microscopical and chemical. Generally, microscopical examination suffices for identification and the comparison is made under a comparison microscope which enables the examiner simultaneously to examine fibres under two different microscopes. On occasions, particularly in the case of synthetic fibres, chemical tests have to be carried out in order accurately to identify the fibre.

It must be understood at the outset that an agreement between two sets of fibres does not necessarily mean that the two sets were originally from the same source. Evidence of agreement of fibres is almost always of a corroboratory nature though the value of such evidence must not be underestimated. Lack of agreement may, however, be a proof of the innocence of a suspect, as the following case illustrates.

An overcoat button was found near the point of entry in a club which had been broken into. A man suspected of the offence was found to have a button missing from his overcoat. The remaining buttons on the overcoat were similar to that found at the scene of the crime. The suspect strongly denied that he was concerned in this offence, though he admitted others of a similar nature. The button and the overcoat were examined at the laboratory. Caught in the cotton which remained attached to the button were some threads which were clearly part of the material of the garment from which the button had come. Microscopical examination showed that these threads were entirely different from those to be found in the overcoat. Thus the only link which connected the suspect to the scene of the crime was found to be false and the case against him, on this count, fell through.

Only rarely does the examination of fibres lead directly to the arrest of a criminal. On occasions, however, examination of fibres left at the scene of a crime has enabled the forensic science laboratory staff to give information regarding the type of clothing worn by the criminal. In the early days of 1939, when khaki was not as common a garb as it was soon to become, fibres found at the scene of a shopbreaking were identified at the laboratory as khaki fibres. As a result of this identification, a soldier was questioned and later admitted the offence.

Fibres do quite frequently play a big part in the investigation of offences of breaking and entering. Fibres from the clothing of the criminal may be left at the scene of the crime or fibres from the scene or from the material stolen may find their way on to the clothing of the criminal.

In a case of larceny of cloth at Belfast, the clothing of a suspect was examined at the laboratory. On the clothing were found several threads of viscose rayon artificial silk. Amongst the material stolen was a quantity of artificial silk of this type, which bore a coloured pattern printed on it. The fibres found on the suspect's clothing were found to bear different colours along their lengths. It proved possible to match these varying colours with the colours and their positions in the pattern of the stolen material. (*R.* v. *Apsley*, Belfast City Commission, 20/7/50.)

In a case of housebreaking and larceny at Stockport, a large sum of money was stolen. The money had been kept in three small sacks, two of which were open and the third sewn up. The two open sacks were left empty in the bedroom of the house, the third was taken away by the thief, presumably to be opened elsewhere. A car in which a suspect had been seen, at about the time of the offence, in the neighbourhood of the house which had been entered, was traced and searched. A small piece of material was found in the car and sent in to the laboratory together with one of the sacks left behind by the thief. All three sacks were known to be of the same kind and had originally contained yeast. The piece of material found in the car was identified as fine jute of the same type as that used in the manufacture of the sacks. Associated with the piece of material were minute quantities of yeast of the same type as that in the sack. (*R.* v. *Eaton*, Chester Quarter Sessions, 7/1/47.)

The shoes of a man suspected of a housebreaking offence were found to be very heavily mud-stained. A footprint in soil, found near the point of entry into the house, could have been made by the suspect's shoes, but there was insufficient detail in the footprint to allow an accurate comparison to be made. A sample of soil taken from the footprint together with the shoes were submitted for laboratory examination. Investigations of the soil on the shoes revealed the presence of coarse wool fibres of twelve different colours. Similar wool fibres of the same twelve colours were found in the sample of soil from the scene of the crime. The housebreaker had been unfortunate enough to tread in that part of the garden where the householder generally threw out her carpet sweepings and had thus collected a good assortment of carpet fibres with the soil on his shoes.

Frequently in road accidents when a pedestrian or cyclist has been hit by a car, the car concerned may show little damage apart from brush marks on some part of the vehicle. Such brush marks may vary from slight rubbings which have removed little but the surface dirt to fairly violent friction marks which have involved the outer layers of paint. If the brush mark is the result of contact with clothing, then some of the fibres from the clothing will frequently be found embedded in the paint on the affected part of the vehicle. Quite frequently such fibres will be invisible to the naked eye and may remain invisible even under a low-power lens. Microscopical examination of scrapings taken from the damaged part of the vehicle will, however, reveal the presence of the small fibres.

The clothing of a man killed in a hit-and-run accident at Blackpool during the War was sent to the laboratory; the man, a Pole, was serving with the R.A.F. Later, a car was examined and a number of fibres removed from the bonnet. Some of these fibres agreed with fibres from the R.A.F. uniform worn by the dead man. There were present, however, amongst the fibres removed from the car, several bright red wool fibres which were clearly not part of the uniform material. A further examination of the Pole's clothing showed the presence of a number of red wool fibres of the same type and colour as those found on the car, scattered over his outer clothing. It was learnt that the Pole had visited a cinema shortly before the accident and the red fibres found on his clothing and transferred thence to the car were probably from the cinema seat. (*R.* v. *Rogers*, Manchester Assizes, 12/3/41.)

As the result of another hit-and-run accident, a woman returning late at night from a dance was seriously injured. A car was later examined and on the offside of the front bumper a small strand of fabric was found. This was examined at the laboratory and compared with fibres from the clothing worn by the injured woman. The strand of fabric from the car was viscose rayon artificial silk and it agreed with one of the silks in the frock worn by the injured woman. The driver of the car claimed that he was in the habit of polishing his car with cotton waste and that the fibre found on his car could have come from the cotton waste. The cotton waste was examined at the laboratory: it was found to contain 15%–20% artificial silk, much of it viscose rayon and some of it of the same colour as the rayon of the dress. Nevertheless, it was possible to distinguish between them. A characteristic feature of the thread from the car and of those taken from the frock was the absence of any marked twist of the fibres that went to make up the thread. In the case of all the fibres found in the cotton waste, the individual fibres were markedly twisted in the thread.

In murder cases and other cases of offences against the person the examination of fibres may play an important part. Transfer of fibres may take place from clothing to clothing, clothing to weapon, from the scene of the crime to the assailant or from the assailant to the scene of the crime as in other types of cases. In stabbing cases fibres from the injured person's clothing may become attached to the knife blade or may adhere to the blood on the blade.

In the early summer of 1948, the dead body of a female child was found in the grounds of a Blackburn hospital. It was clear from the nature and extent of her injuries that she had been most brutally murdered. At the post-mortem examination a large number of blue fibres of various shades were found adhering to the child's body. The floor of the ward in which the child had been sleeping before her death, and from which she had been taken by the murderer, bore a number of impressions of stockinged feet. These footprints after they were photographed were thoroughly scraped and the resultant scrapings examined under the microscope. A number of fibres were found, blue and red in colour. Eventually from finger-prints left in the children's ward a man was traced and his clothing sent to the laboratory. Fibres from a bloodstained suit were found to match exactly the fibres taken from the body of the child. A pair of hand-knitted blue wool socks, into the feet of which had been interposed a broad band of red wool, gave fibres completely in agreement with those found in the scrapings from the footprints. (*R.* v. *Griffiths*, Lancaster Assizes, 18/10/48.)

In the spring of 1951, the dead body of a woman was found on some waste ground near Tyldesley, Lancashire. A white silk scarf was tied tightly round her neck and it was clearly a case of murder. At the post-mortem examination, scrapings were taken from under the finger-nails of the dead woman and sent to the laboratory. Later the clothing of a man thought to be responsible for the crime was also received at the laboratory. Microscopical examination of the material from the dead woman's finger-nails revealed the presence of several small, brown, wool fibres. These were found to agree microscopically with fibres from the suit of the suspect. (*R.* v. *Wright*, Liverpool Assizes, 2/6/51.)

This series of illustrations will give some idea of the wide range of fibre examinations that can be made. It must not be thought, however, that the evidence regarding fibres was the only evidence given in these cases. In most of the cases mentioned there was a considerable body of other evidence, some scientific in nature, without which the evidence of the fibres alone would not have carried sufficient weight to convict. Circumstantial evidence does not lie but it generally requires support, either from other circumstantial evidence or from witnesses of fact.

Society and Criminal Responsibility

By JEAN GRAHAM HALL, LL.M., *Barrister-at-Law*

The changing attitude of society towards criminal responsibility was the subject of a summer school recently held in Oxford by the Institute for the Study and Treatment of Delinquency. Many problems came within this wide periphery and discussion encompassed the legal, ethical, religious and psychological aspects.

Approved Schools

John S. Gittins, Principal of Aycliffe Classifying School, suggested that the most important development in the realm of treatment in approved schools was a recognition of types of offenders which the schools could not treat, together with the presenting of ideas concerning new and more effective methods.

Recent surveys revealed that between 15 per cent. and 17 per cent. of the intake of approved schools could not benefit from their treatment. These percentages referred to children of sub-normal ability. Mr. Gittins agreed that low intelligence and emotional instability did not necessarily go hand in hand. It was quite possible to train a stable dull defective. With good after-care he might ultimately settle down providing he possessed a capacity for independent social adaptation.

Even where available, psychiatric treatment of offenders was frequently useless. According to Mr. Gittins, most of those who went to approved schools possessed too low an intelligence to benefit. He commended psychiatrically guided treatment, prophesying a bright future in this direction.

Mr. Gittins favoured the idea of a village settlement with living conditions appropriate to those of sub-normal intelligence. He believed that in such a freely entered community, which provided the opportunity to undertake useful work and provided extra social services, many would find social adaptation much easier to achieve. In pleasant purposive surroundings, the borderline group of social ineffectives, suffering from disabilities and from environmental defects, could make their contribution to society. These ineffectives were at present unable to make adjustments to the complicated demands of society and the social agencies did not cope with their needs.

Maladjusted Children

Dr. Portia Holman spoke of the treatment of maladjusted children. She stressed that the term "maladjusted" did not necessarily connote either delinquency or intellectual backwardness. However, there existed large areas of overlap. In Dr. Holman's opinion, nearly half the number of delinquents were mentally disturbed.

Strains were imposed upon all individuals. Some could draw on more resources than others and were thus better equipped to meet these strains. If subjected to chronic strains over a long period, those children endowed with poor intellect or physical defects could not sustain the prolonged burden. Mental disturbances, said Dr. Holman, might manifest themselves in several ways, such as flight in truancy or aggression in stealing. When dealing with these disturbances, Dr. Holman considered it important to try and diminish the strains to which the child was exposed, at the same time strengthening the child's personal resources by psychotherapy. This would include a special kind of education. The alternative was to create a new environment. This would prove necessary if the present environmental strains could not be alleviated, or if the child's potential resources were too limited.

Delinquency Areas

John B. Mays, Warden of Liverpool University Settlement, dealt with society's responsibility for crime. While fully appreciating that personal responsibility existed, Mr. Mays propounded the view that any act which takes place is also the responsibility of all members of the community. A society deserves its misfits and malcontents, because it creates its own aberrations. An emphasis on wealth and violence perpetuates its own particular type of crime.

The responsibility of society, said Mr. Mays, lies in two closely related fields. First, in the environmental and other social conditions which are conducive to lawless behaviour; secondly, after a criminal act is committed, in the realm of the treatment of offenders.

Many studies have shown that criminality begins in childhood, and the adult criminal is the juvenile offender grown up.

In the slum property of large towns, there exist large defined areas which year after year produce fresh crops of juvenile delinquents. In these particular neighbourhoods, most young people succumb, if only for a time, to tradition and to the particular infections handed on by their predecessors. They take part in delinquent behaviour for perhaps two to three years in adolescence. About the age of fourteen to fifteen years, they leave their delinquent behaviour behind, if their own normal recuperative powers work. However, in this sort of environment, some young people, who have developed emotional difficulties centred round the family relationship, do not succeed in throwing off delinquent activities. This personal frustration, plus a bad environment, leads to the development of adult criminals.

Mr. Mays expressed anxiety lest the recent fall in crime rates, particularly with regard to juvenile offenders, should lull anyone into a false sense of security. There existed, he explained, a wonderful opportunity for reducing numbers even further, by tackling the problem of confirmed delinquency and recidivism. The need for prevention could be met by a scheme of community programmes through social group work; and by a scheme for providing the family with more support than it at present received, especially at a very early stage in its difficulties.

The Multiple Causes of Crime

At the summing-up session of the school, Dr. Max Grunhut, Reader in Criminology at the University of Oxford, drew attention to the principle of " multiple causation of crime," first realised by Sir Cyril Burt.[1]

Dr. Grunhut said that crime was never due to one single cause, but to a number of factors, all of which occur in non-criminals. Human behaviour springs from a complex pattern, and not from the artificial isolation of one act. In attempting to explain normal behaviour, one should respond to multiple causation by multiple research, realising that objectivity is always difficult to achieve because it is impossible to dispense with personal, subjective judgments.

The limits of personal responsibility should be realised, according to Dr. Grunhut, in two respects. First, some people are so handicapped with endowments, such as low intelligence and emotional difficulties, that they would fail in almost any circumstances. Second, there are some circumstances, such as living in the delinquency areas described by Mr. Mays, in which only a heroic attempt would suffice. It is only somewhere in the field between these absolute limits that personal responsibility can truly be said to exist.

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[1] Sir Cyril Burt, *The Young Delinquent.* Published by The University of London Press, 1948.

A Day in a Police Court

By A. E. Jones
Magistrates' Clerk

The series of which this is the eleventh instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

Debts

It was half past three when the warrant officer called Summons No. 25; two minutes later he was calling on Summons No. 35. In the meantime the magistrate had made three orders, marked four cases "withdrawn," two "not served" and one "adjourned seven days." It was faster than dealing with speeding motorists; and electricity was, appropriately enough, the subject-matter of adjudication. Not one of the ten defendants appeared, so after the oath had been taken it was only necessary for the clerk to put four questions to the man in the witness box.

"Are you George Aloysius Whettonby, duly authorised by the electricity authority to take these proceedings?"

"Have the defendants summoned this afternoon incurred the debts set forth on the summonses in respect of electricity supplied and meter rents?"

"Were the amounts due demanded more than seven days but not more than six months before the day you applied for the summons?"

"Are the accounts unpaid in the cases where you are asking for an order?"

Mr. Whettonby had been answering "Yes" to these questions for many years and once he had done so the court could gallop away through its list. The warrant officer would call the name of the defendant; the clerk would check from the endorsement on the summons that it had been properly served; the collector would say "Paid, withdrawn," or "Order and costs, please, your worship" and the magistrate would echo an adjudication. In the case which was adjourned seven days a cheque had been received but not yet cleared.

Railway Frauds

The next five summonses in the list were for travelling on the railway without having previously paid the fare due and with intent to avoid payment thereof; one defendant, in addition, had to face a charge of giving a false name and address to an officer of the railway after having failed to pay the proper fare. As the first of the five names was called Mr. Sympeter rose in the solicitors' box and said, as he had done for more years than anyone could remember, "I appear to prosecute in these cases, sir."

The first defendant, Vincent Chaplin, did what most defendants did in this type of case; he pleaded guilty. Mr. Sympeter had only to give a brief outline of what he correctly called "the usual case." The defendant had arrived at his destination and tendered 3d. to the collector at the barrier saying that he had come from the next station down the line. He was questioned about what he had been doing before he entered the station and then about its geography. Very soon he was tripped up and eventually admitted coming a journey for which he knew the fare was 11d.

"Anything to say to me?" asked Mr. Sutterthwick of Vincent Chaplin.

"No sir. Only that I didn't actually mean to defraud the railway."

"But you pleaded guilty when the charge was put to you —quite clearly—by the clerk."

"Well, I admit I did foolishly say something to the collector which wasn't true, but I did really mean to pay the other end when I got into the train. I should have missed it if I'd waited for a ticket. That's why I didn't take one at the booking office, and I know that was wrong. Then in the train I found I had only 3d. in coppers and as I was in a hurry and didn't want to hang about for change I was tempted to try to do something rather silly."

"I should call it dishonest," was the magistrate's comment. "Don't you realise that that's what it was? If the collector had believed your story you'd have paid 3d. for something you knew cost 11d. If it was really true that you didn't intend to defraud the railway you wouldn't be guilty of this offence and if I thought that's what you actually meant I'd allow you to change your plea and I'd hear the evidence and try the case. But on your own statement it's clear you were trying to cheat, only apparently you won't face up to it mentally The precise moment at which the idea came to you hasn't much bearing on the point."

"Well, sir, it only happened because there was a long queue at the booking office and the train was due in."

Mr. Sutterthwick gave it up. He passed on to the assessment of the penalty.

"What are you by occupation?"

"A clerk, sir."

"And how much do you earn?"

"£6 10s. 0d. a week, sir."

"Married?"

"No, sir."

"Well. I can't understand why a man of your standing should put yourself in this position for the sake of a few pence. You must pay a fine of 30s. and one guinea costs."

A letter of excuse

In the next case there was a letter from the defendant asking to be excused attendance as he "did not like to ask for time off from work." The writer continued, "I plead guilty to the charge and I apologise for the trouble I have caused. I was hard up and I had been told by other people how easy it was so I took a chance but am sorry to say I came unstuck. I hope you will treat me leniently as I have a wife and three children and only take £5 17s. 5d. a week."

The offence had to be formally proved but as there was no dispute about it Mr. Sympeter could frame his questions to get from the ticket collector only the essential facts and those in the shortest form. There was a slight variation in the method adopted in this case and therefore the accusation was differently worded. The defendant had obtained access to a train by taking a 2d. ticket for the next station to the one he started from, then travelled some distance down the line and told the collector when he got out that he had come without a ticket from the station immediately preceding his destination. But, like the previous defendant, he had failed to give the right answers to the questions put to him to test his story; finally he had been obliged to confess the truth. "Fare avoided 1s. 3d.," concluded the witness. It was a clear case of "knowingly and wilfully travelling beyond the distance for which the fare was paid, without previously paying the additional fare, and with intent to avoid payment thereof," to use the words of the statute. A fine of 10s. and half a guinea costs was imposed.

The truculent passenger

Then came William Burling who pleaded not guilty in a very decided manner. Mr. Sympeter opened the case as "another of the usual cases," and the ticket collector's evidence appeared to justify that description. The passenger had come to the barrier and said he had travelled from the next station up the line and hadn't stopped to take a ticket. The witness went on, "I asked him if he'd mind telling me where he'd been before entering the station, and he said 'Why should I tell you?' I said I wished to see if his story could be verified and he said 'If you don't believe me you can do the other thing.' I said that inquiries would have to be made and he said 'All right. I came the whole way. Here's the fare," and he handed me a shilling. I refused to accept it and said the matter would have to be reported. He replied 'What happens now?' "

Mr. Sympeter sat down; the witness had completed his story so far as the solicitor knew it.

"Is there any question you wish to ask the collector?" inquired the magistrate of the defendant.

William Burling looked at the witness with obvious dislike and said "No, thank you" as decidedly as he had pleaded not guilty.

"Is that the case?" the magistrate asked Mr. Sympeter.

"There is another collector who can give corroborative evidence," replied the solicitor.

"The first witness's evidence doesn't appear to be challenged," pointed out the magistrate.

"Very well, sir. I won't call the other witness."

"Do you wish to give your account of this on oath?" said Mr. Sutterthwick to the defendant.

"Yes, sir. I don't mind. I'll tell the truth anyway."

"Well, it's for you to decide. You're not bound to. If you prefer it, you can say what you have to from where you are, without being sworn. But evidence on oath carries more weight."

"I'll take the oath then."

Mr. Burling was duly told by Sergeant Quing to " read the words on the card," but like many another witness he departed from the text and gave an impression of having a Deity of his own by starting with " I swear by my Almighty God . . ." and finishing with " so help my God." Like a bad scholar in the classroom he had to say it all again correctly.

The clerk's opening questions brought the defendant's confirmation that his name and address were as set out on the summons and he gave his occupation as bricklayer. Then in response to Frell's invitation to give the magistrate his version of what happened, he burst out " That ticket collector hasn't told you half what he said, sir. He kept on asking me silly questions and badgering me in a very bullying tone too, till I got fed up with him and told him I came from the terminus just to get rid of him. But I had only come from the next station as I told him at first. I didn't see why I should tell him my business though. Why shouldn't he believe me? What right has he to ask me all those questions? I'm not a criminal and I never defrauded the railway."

" Is that all you wish to say about it ? " said the clerk when he had caught up with this in his note.

" Yes, I think so. Except that the collector said I'd have to wait while they made inquiries and I was in a hurry to get home as I'd got my wife ill in bed."

The prosecution's cross-examination probed the defendant's story searchingly for a weak spot, but William Burling had a reply to all Mr. Sympeter's questions. Before getting on the train he had been to see a man about a motor-cycle that was advertised for sale. Was he calling the man as a witness? No, he wasn't, because he didn't see him; there was nobody in when he called. But he could and did give Mr. Sympeter the address and the time he got there. He also answered correctly a question about the fare from that particular station. If his story were true why shouldn't he have told the collector? Because it was none of the collector's business. Well, why did he say afterwards something which, according to him now, wasn't true—that he'd come all the way. He'd already said—he was in a hurry and he wanted to get away; he thought the collector was only trying to catch him over the fare and that he'd be satisfied if he got the full fare from the terminus. Did he really ask the magistrate to believe that he thought the collector was trying to extort more than was due? Yes, he did, the collector acted very nasty like. In what way? Well, he couldn't remember the exact words now but the collector as good as told him he was a liar. And what else did the collector say? You couldn't expect him to recollect every word that was said; there was a whole lot of it—all trying to get him to admit that he came from further up the line. How did the collector try to get him to admit that? Oh, he kept on trying all sorts of ways. He said 'You may as well own up. You'll have to in the end. We shall get it out of you sooner or later. We don't mind waiting here all day. We're paid for it.' Did he seriously suggest the collector said that? Yes, he did. God's truth. He'd take his oath on it.

"You are already on oath," the magistrate reminded him coldly.

Mr. Sympeter asked permission to recall the collector in rebuttal of the defendant's evidence. "It wasn't put to my witness in cross examination so I had no chance to re-examine him on it," he said.

Mr. Sutterthwick decided he could allow the collector to return to the box. That officer was only too anxious to get there to deny the aspersions cast on his official reputation. Mr. Sympeter put to him each allegation made and he rejected them all in turn indignantly. He had never and would never treat a railway passenger in that way; he was always courteous and civil to the public; he would never dream of speaking to anyone at all in that way.

Burling had no witnesses to call and nothing more to say.

"This case has developed somewhat unexpectedly," said Mr. Sutterthwick. "If the ticket collector had been guilty of any conduct which amounted to an attempt to extort a confession from Mr. Burling by threats or cajoleries I should be bound to reject as inadmissible whatever was said in consequence by the defendant. But I'm not satisfied on the evidence that there was anything in the behaviour of the ticket collector which would invalidate in this way the defendant's statements. That isn't the end of the matter, however. The case for the prosecution is based entirely on what the accused said. There is no other evidence as to the journey he took. Judging by the demeanour of Mr. Burling today, the explanation he's given of what he said at the time is a possible one. At any rate I'm not satisfied beyond all reasonable doubt that his admission to having come from the terminus was a true one. That being so I must acquit him but he has only himself to blame for the summons he received."

The expression on the defendant's face as he departed was as difficult to diagnose with certainty as the truth of his evidence.

A false name

The truculent Burling was succeeded by a defendant who was fragile looking and spoke in self-consciously ladylike tones. Diana Weymouth was summoned not only for attempting to defraud the railway but also for giving a false name and address to the ticket collector. She admitted the latter charge adding, "It was only because I didn't want any trouble brought on my people." But she pleaded not guilty to the first summons.

The evidence of the ticket collector in this case was that she had told him she had come from two stations away without a ticket, had been shopping in the district and had gone onto the station platform down a flight of stairs. Only after he had pointed out to her that it was early closing day in that particular locality and that the platforms at the station in question were on a level with the street, did she admit coming a considerably longer journey.

The lady's answer to this in court was a vague echo of the previous defendant's story. The collector had been most rude and abrupt with her. She was very upset and frightened by it and hardly knew what she was saying. In her confusion she may have said these things—she really couldn't remember now; but she certainly hadn't been trying to defraud the railway.

"I can't understand why being confused should make you say what was untrue," commented the magistrate. He could not ask her questions because she had not availed herself of her right to give evidence on oath. "I can tell the truth just as well from here," she had said prettily.

"Have you any witnesses to call?" asked the clerk when she had finished what she had to say.

"No, sir. I was all on my own. I've got nobody to speak for me."

"I find the charge proved," said Mr. Sutterthwick. "It's a perfectly clear case. Did she give much trouble on account of the false name and address?"

"No, sir," said Mr. Sympeter. "She gave her correct name and address as soon as the collector asked her if she had anything to verify the one she'd first given."

In reply to the magistrate's next question, Diana Weymouth gave the information that she lived at home and was a " secretary " earning £5 10s. 0d. a week. " I can't understand why a young lady like you should do a mean thing like this," he began.

" I offered to pay the fare and he wouldn't take it," interrupted the defendant.

Mr. Sutterthwick said, " You don't cure dishonesty by offering to pay after you're found out. Pay a fine of 20s. and a guinea costs on the first summons, and a fine of 10s. on the second."

" I think your magistrate's a beast," said Miss Weymouth to Sergeant Chumbleton as she paid her £2 11s. 0d. in the gaoler's office.

No defendant

No defendant appeared in Mr. Sympeter's last case of the afternoon. There was a letter instead which said : " Dear Sir, Will you please excuse my non-attendance as I am engaged on very important work and cannot be spared. I plead guilty to the charge but I had no intention of defrauding the railway. I apologise for my mistake and I realise I shall have to pay for it but I hope it can be kept out of the papers."

" The letter was only received this morning, sir," said Frell. " So there was no time for a reply to be sent."

" I shall adjourn the case for a week," decided the magistrate. " Let the defendant be informed that if he denies any intention to defraud the railway he should come and put his case in person. If he doesn't attend the court next week I shall deal with the summons in his absence."

" Thank you, sir," said Mr. Sympeter, and asked for a futher seven summonses for similar offences. They were granted and Sergeant Quing called on " Summonses 41 to 48—Lily Hobson, John Elderton, Frances Hobson, Eliza Elderton, Harold Hobson."

Binding over

With the averred object of getting peace and quiet, Lily Hobson and her daughter-in-law Frances had, a fortnight previously, taken out summonses against Mr. and Mrs. Elderton for assault. The day after the summonses were served on them John and Eliza Elderton came to the court and Mrs. Elderton took out summonses for assault against the two Mrs. Hobsons and against Harold Hobson, the husband of the younger; Mr. Elderton's summons alleged an assault by Harold Hobson only. That meant eight summonses in all distributed amongst five persons, all of whom, except Harold Hobson, were complainants as well as defendants and each of them, except for the two Hobson ladies, was doubly a defendant. Fought out to the bitter end the case looked to Frell good for a two hours' hearing.

Mr. Tarkaway and Mr. Durnstable, the two busiest of the solicitors who practised at the court, rose in their seats and announced that they appeared for the Hobsons and Eldertons respectively. Mr. Durnstable then sat down; Mr. Tarkaway, representing the earliest complainants, had first say.

"In this case," he said, "all the parties live in the same house and my clients feel that they have good grounds for complaint about the conduct of the Eldertons in matters concerning noise and cleanliness in the premises. On my instructions the alleged assaults on the two Mrs. Hobsons followed on a perfectly legitimate remonstrance they made about a blaring wireless set in the Eldertons' flat which was preventing young Mrs. Hobson's baby from sleeping. I have medical certificates showing that the two ladies were quite badly knocked about. . . ."

"I hope my friend isn't going to suggest that they are evidence" interrupted Mr. Durnstable.

"No," said Mr. Tarkaway, "I am well aware without my friend reminding me that they are not strictly admissible. As my friend knows, it will not be necessary to call any evidence at all in this case. My clients are not vindictive; all they desire is quiet enjoyment of their home. Providing they get guarantees of that they are prepared to let bygones be bygones. I told my friend of their attitude and I am happy to say that as a result of the conferences we have had with our clients, all parties are now willing to be bound over to keep the peace in future, and the charges of assault will not be proceeded with. No costs will be asked for on either side. All this, of course, is subject to your approval, sir."

"Might I add, sir" said Mr. Durnstable, "that my clients do not admit the alleged assaults on the Hobsons, nor do they agree that they are in any way a nuisance in the house. In fact, my instructions are that the Hobsons have been very inconsiderate towards the Eldertons over leaving doors open and leaving their pram in the hallway. I should have been prepared to call a doctor, if necessary, to give evidence of the quite serious injuries inflicted on them by the other parties to this case. However, my clients are not vindictive either and all they want is to be safeguarded against future molestation in their own home. That is why they have consented to the course which my friend has mentioned."

Bound over to keep the peace

"I'm very glad to hear that everyone is being so sensible," said Mr. Sutterthwick, "and I'm much obliged to you two gentlemen for your peacemaking efforts. I'm sure you've given your clients the best possible advice. Mr. and Mrs. Elderton, the two Mrs. Hobsons and Mr. Hobson will each be bound over in the sum of £5 to keep the peace for the next twelve months. I do sincerely hope that the hatchet is now permanently buried. With the housing situation as it is I expect you can't get other accommodation, so you might as well make the best of it and act as good neighbours towards each other. Apart from anything else you stand to lose £5, each of you, if you're guilty of a breach of the peace in the next twelve months."

But it was not the overhanging threat of loss of money which made binding over effective. Its efficacy seemed to lie in a mysterious sort of paralysis proceeding perhaps from the very words "you're bound over," sounding so strangely like an incantation. The court knew of cases where the person bound over would go quietly through the whole period of his recognisance and then celebrate its expiry with a first class row. Others came to the magistrate and complained "They're tantalising me, sir, and they know I can't do anything because I'm bound over." It even became with some a kind of distinction; there was a way of saying "I'm bound over, you see," which recalled the melancholy pride shown frequently by those who announce themselves victims of some chronic illness.

There was no time, however, to speculate on the effect the magistrate's adjudication would have on the Eldertons and Hobsons, for the warrant officer was calling the next case.

Court Proceedings and Magnetic Recording

By R. H. HARBOUR

Experiments carried out some four years ago into the practicability of recording the proceedings of a magistrates' court by means of a magnetic recorder aroused interest at the time in many courts in the country in the possibilities of the magnetic recording system as a means of recording court proceedings.

The past four years have seen noticeable improvements in the design of magnetic recorders and a marked increase in the variety of models manufactured. We propose briefly to review the position since our first experiments in 1950, and to consider whether progress in magnetic recording since that time has brought nearer the practical application of this system to the business of recording court proceedings.

Magnetic and mechanical systems

The magnetic system is not, of course, the only method of recording sound. It has a serious rival, especially in the world of music, in the mechanical system of recording which employs the disc or "record." This system has recently seen an event of major importance in the arrival of the long-playing record, which, by using a smaller groove and a slower speed, has increased the playing time of a twelve-inch gramophone record from about four-and-a-half minutes to about thirty minutes. Notwithstanding this improvement the mechanical system is unlikely seriously to compete with the magnetic system as a medium of recording court proceedings, for it suffers an insuperable disadvantage in that once a recording has been made on a disc it cannot be erased to enable the disc to be used again. The mechanical system also requires greater experience to ensure a successful recording and it is more difficult to handle.

Magnetic recording owes much to the work of Valdemar Poulsen, who was the son of a Danish judge, and who in 1900 exhibited in Paris a machine he had invented called the Telegraphone, which recorded sound on a steel wire. The modern magnetic recorder employs as a recording medium plastic tape, about one-quarter inch wide, which is coated on one side with finely divided magnetic particles. This tape is made to move at a fixed speed under a recording head which is connected through an amplifier to a microphone. As the tape moves under the recording head the pattern of the magnetic particles on the tape varies in accordance with the impulses fed to the head, and the recording is made. Reproduction is effected by reversing the process and passing the tape under a replaying head, when the sounds are reproduced from a loud-speaker. A recording no longer wanted can be erased at the same time as a new recording is made, and the same tape can be used many times over for new recordings. A recording can if necessary be retained on the tape for years, and numerous replayings appear not to affect the quality of reproduction.[1]

The recorder used in our first experiments employed what is known as full-track recording, *i.e.*, the recording occupied the full width of the tape. This method is giving place to multi-track recording, and many present-day recorders utilise the twin-track system. With this system the first recording is made along half the width of the tape, the reel is then turned over, and the remaining half of the tape continues the recording. This method doubles the recording time for the same length of tape. The tape capacity of the reels varies with different recorders. A popular size contains 1,200 feet of tape, but some recorders accommodate reels of 3,250 feet capacity. A reel of 1,200 feet operating at a speed of $3\frac{3}{4}''$ per second on a twin-track recorder records for two hours.

The speed at which the recorder operates is of particular importance in recording court proceedings, where long runs of recording are required without the necessity of frequent stops to turn over the reel of tape or to fit a new reel. Economy in the use of tape is also important from the angle of cost. Fortunately, a slower speed will suffice for recording speech than is necessary for satisfactorily recording music, as the frequency range of speech is much less than that of music. Many present-day recorders are twin-speed, the faster speed for recording music and the slower speed for speech. A speed of $3\frac{3}{4}''$ per second gives very good quality of speech reproduction; indeed, as improvements in design continue this speed may become uneconomical. The tendency to a slower speed is reflected in a recorder recently marketed which claims excellent speech quality at a speed of one inch per second. Information recently received has hinted at the appearance of a recorder which is said to operate for some sixteen hours.

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[1] For a fuller account of mechanical and magnetic recording see [1954] Crim.L.R. 96.

In choosing a recorder special consideration should be given to the tape-driving mechanism. Some recorders employ a single motor for all tape transmission, and these models usually necessitate the use of belts. Other models, which we personally favour, employ separate motors (usually three) for each task, and this design avoids the inherent transmission weaknesses of the single motor type. It is not possible here to consider the many other points that will weigh with the prudent buyer in making his choice of an instrument, but it may be observed that whilst manufacturers' specifications provide a useful guide the ear remains the final court of appeal on performance.

Microphones

Microphones are of many types, and the choice will be determined not only by the recorder but by the purpose and conditions of its use. A well-designed recorder will record a voice, speaking at normal conversational level, from a distance of about fifteen feet from the microphone if the acoustics of the room are good. If relatively long connecting leads have to be used between microphone and recorder the low impedance type of microphone should be used as the high impedance type is unsuitable for this purpose. Microphones are also of the directional and non-directional type and the right choice here is important. The directional microphone, as the name implies, discriminates between sounds that come from the front and back (to which it gives maximum sensitivity) and sounds that come from the sides. If speech coming from many directions has to be recorded with equal strength the non-directional type should be used, but if the microphone can be placed in the line of speech between, say, advocate and witness, the directional type is best as this type helps to mitigate the difficulty of recording in an over-reverberant courtroom.

Acoustics of courtroom

The acoustics of the courtroom play an important part in the making of a successful recording. A difficult problem may arise if the courtroom is over-reverberant. Reverberation, which is another name for multiple echoes, will interfere materially with the intelligibility of speech if it is excessive. A large courtroom with hard walls and ceilings, and sparsely furnished, will have a high degree of reverberation. Every effort should be made where possible to reduce reverberation, and where no structural improvements are possible the use of soft furnishings in the shape of heavy velour curtains at the windows and rubber covering on the floor will help. The use of a directional microphone is also indicated.

Voice identification

A difficulty likely to arise in recording court proceedings is where a number of voices are recorded in rapid succession, *e.g.*, during the cross-examination of a witness, or where the advocate or witness is interrupted by a question from the bench or by the advocate on the other side. In the subsequent transcription of the recording if the person making the transcription was not present when the recording was made, and is therefore unfamiliar with the subject-matter and the speakers' voices, he may experience difficulty in distinguishing the different voices. The problem would seem to be not so acute in magistrates' courts where the clerk or his assistant is present during the recording and where he subsequently makes the transcription, but in the superior courts this problem may prove troublesome as the reels may subsequently be passed to a typist for transcription. The text of the subject-matter affords some guide as to identity, and it has been suggested that a note be taken in court to guide the typist when making the transcription, but this would involve some means of linking up the note with the recording.

So far as we are aware, no commercially produced recorder now on the market incorporates any device which has been designed to assist the identification of the recorded voices.

A satisfactory solution of the problem suggests that some method be devised which will ensure that when the recording is subsequently reproduced the identity of each voice will be established immediately the voice begins to speak, or, in other words, an identifying signal be recorded with the voice. This identifying signal would have to be distinctive, capable of immediate application when the particular voice begins to speak, and be of such a type that it could be recorded with the voice without interfering on reproduction with the intelligibility of what was said. The advantage which a shorthand writer has over a magnetic or mechanical recorder is that he can see the person who speaks and note this in his book when writing down what is said. It would seem to follow that any system employing an identifying signal would need a visual operator.

As a result of experiments along these lines we constructed a small and simple piece of mechanism which operated at the base of the microphone, and which succeeded in recording an identifying signal in the background of the recorded voice. This mechanism produced an acoustic signal which was sufficiently weak not to disturb the speakers yet strong enough to be transmitted via the microphone into the recorder and to form an identifying signal. The mechanism was electrically operated at a distance from the microphone by the person in control of the recorder, and the signal which was of a few moments duration was recorded as the voice to be identified began to speak. A simple code was used to distinguish the voices which it was desired to identify.

It may be that the principle of making a voice carry its own means of identification, which is the principle upon which the experiments were based, is the one most likely ultimately to provide a satisfactory solution of the problem of voice identification: a problem which manufacturers of existing recording apparatus may not have appreciated in cases where such apparatus is to be used in recording court proceedings. There should be little difficulty in devising a means of making an electrical signal direct to the recorder instead of an acoustic signal to the microphone as used in our experiments.

Recording court proceedings

Questions have been put to us concerning the possible use of recording in taking depositions before examining justices on committals for trial. Suggestions have included the recording of the evidence in the presence of the accused, the recording to be passed out to a typist who would transcribe the evidence into typewritten form. Whilst this was being done the other business of the court would continue, and at a later stage the evidence, then ready in typewritten form, would be read over to the witnesses in the presence of the accused and signed.

This method is similar to that now used in some courts, except that the evidence is first taken in shorthand instead of being recorded, and the typewritten transcription is later read over to the witnesses in the presence of the accused and signed.

The weakness of both methods lies in the length of time which must necessarily elapse between the actual taking of the evidence and its subsequent presentation in written form. Whilst the transcription is being made the witnesses, accused, and other persons concerned must either wait or return to court at a later time. We have heard instances of all the parties being required to attend the court several days later for the purpose of having the depositions read over and signed, a practice which seems to us to be fraught with danger lest in the meantime anything untoward should happen to a witness, the magistrate, or the accused. This method also involves unjustifiable expense in requiring a second appearance of the parties and a further loss of their time.

We think that in practice it would prove more difficult to transcribe depositions from a recording than from a shorthand note, for the reason that a magnetic recorder, unlike a shorthand writer, cannot exercise a discretion when taking the deposition of a witness. It is common experience when taking depositions that a certain amount of what is said is irrelevant or inadmissible and this is not taken down; the completed depositions are never a literal record of every word spoken during the hearing. Points arise during the unfolding of the evidence that need clarification, and the finished depositions comprise all the relevant and admissible evidence upon which the accused is committed. A full recording would contain both the admissible and the irrelevant and inadmissible testimony given at the hearing, and a typist faced with the task of transcribing it almost certainly would need a preliminary playing of the recording (probably section by section) before beginning the task of extracting the admissible and making a fair copy of the depositions. This would increase still further the length of time needed for transcription.

The important difference between taking depositions and recording evidence in all other court proceedings is the urgency in the former case of converting the spoken word into a visible form.

In committal cases we have found no method superior to the use of the noiseless typewriter in court, provided the operator is a maestro in typing and in the undoubted art of taking depositions. A typing speed of sixty words a minute (preferably more) for sustained periods should be attainable without difficulty, coupled with the ability to sort the admissible from the inadmissible and irrelevant as the evidence is given. We recollect one murder case of fair length in which the proceedings before the examining justices were opened and the case concluded the same day by using this method, and the original set of depositions with five completed copies (taken simultaneously with the original) were available the same evening.

The ability to take depositions with speed and skill comes with practice and experience, aided by a temperament suited to an exacting and specialised type of work. If the services of such an operator are not available the recording of the depositions in the first instance with subsequent transcription into typewritten form may prove the better method. A decision as to the method to be employed will be determined largely by the facilities available.

In magistrates' courts magnetic recording can be of great assistance in complex cases, and in matrimonial cases especially, by providing an independent and completely accurate record of the proceedings: a record which can be used either in substitution of the written note or as a parallel record to it. In the superior courts its scope and importance justify its claim for serious consideration, and this is no less true in other courts.

We have little doubt but that the magnetic system will ultimately find a place in recording court proceedings. Our feeling is that progress towards this goal will be limited not by technical difficulties but by matters of finance. If the authorities that hold the purse are willing to aid progress in this direction there is no doubt that science can deliver the goods.

Practice and Procedure

Quarter Sessions

Status of the Appeal Committee of Quarter Sessions

It is not uncommon for counsel appearing in summary jurisdiction appeals at quarter sessions to address the tribunal as " the committee." Colour is lent to this practice by the wording of section 7 (1) of the Summary Jurisdiction (Appeals) Act, 1933, which provides that the " powers and duties of a court of quarter sessions with respect to appeals to which this Act applies shall, in the case of quarter sessions for a county, other than the County of London, be delegated to, and exercised and performed by, a *committee* of the justices of the county to be appointed by quarter sessions and to be known as the appeal committee." In spite of this it is submitted that the practice is wrong and also undesirable. That it is wrong is shown in subsection (3) (*c*) of the same section which provides that " the committee in hearing and determining any appeal shall act by *a court* consisting of not less than three nor more than twelve members of the committee." Subsection (3) (*d*) speaks of " courts so composed " and of the constitution, when necessary, of two or more " courts "; (3) (*e*) of the " chairman of the court "; (4) of a " court " so composed. Indeed the Act consistently distinguishes between the " committee " as a whole which has some administrative functions such as fixing dates of hearings, the number of courts which will sit and the " courts " for the hearing of appeals which are composed of members of the " committee."

It is, perhaps, unfortunate that the Act used the word " committee " at all. The administrative functions are meagre and it would have been less confusing if " panel " had been substituted for committee as a collective description of those justices who are entitled to adjudicate on appeals as it was used when juvenile courts were formed.

That it is undesirable as well as wrong to address the appeal tribunal as a committee arises from the false impression which this form of address makes on the public. Committees are known to be administrative and courts judicial bodies. It is most important that the distinction should be maintained. In many counties courts of quarter sessions sit in buildings which the public associate with administrative functions. Furthermore, many prosecutions are now brought by local authorities and there must be no excuse for fear that an appeal from a conviction or order obtained by a local authority will be dealt with by an administrative committee.

In the first place because it is right, and in the second because it is important to create the right impression in the public mind, counsel should address the chairman of the court hearing an appeal in exactly the same way that he does the chairman of a full court of quarter sessions. [Brigadier A. C. C. Willway, C.B., C.B.E., T.D., D.L., Deputy Chairman, Surrey Quarter Sessions.]

Magistrates' Courts

The "penalty" for disobedience of a summary order

In general terms, where a magistrates' court makes an order which is not for the payment of money any person disobeying it may, by section 54 (3) of the Magistrates' Courts Act, 1952, be ordered to pay up to one pound for every day of his default (subject to a maximum of twenty pounds) or may be committed to custody for a period not exceeding two months. By subsection (4) of section 54 any sum ordered to be paid in this way "shall be enforceable as a civil debt." This means that a judgment summons must be issued before there can be a committal to prison in default of payment.

A judgment summons is now, by the terms of section 73 (1) of the Magistrates' Courts Act, 1952, issued on a complaint for an order—though previously under the Summary Jurisdiction Acts it was not expressed to have this character. The question may arise under the new Act: who should be the complainant for the purpose of taking out a judgment summons to enforce payment of a sum ordered under section 54 (3) of the Act of 1952?

In the case of a judgment summons issued in respect of a debt owing to some person that person is the obvious complainant and has a very strong incentive to take proceedings to enforce payment. In fact, the form of judgment summons prescribed (No. 86 in the Magistrates' Courts (Forms) Rules, 1952) contains the recital "Complaint has this day been made . . . that . . . you were ordered . . . to pay to the complainant the sum of . . ." Can the person who was the complainant for a non-pecuniary order which has been disobeyed claim that a sum subsequently ordered to be paid in respect of that disobedience is ordered to be paid to him? There is no provision in the statute to that effect. Such a sum seems to represent a punishment for contempt of court rather than a compensation to the complainant for his failure to obtain the benefits of the court's order. If the money in question is not due to the original complainant it would seem that he has no authority to take out a judgment summons to enforce payment of it. Certainly he would have little personal interest in doing so.

Accordingly it will fall to the magistrates' clerk to take the requisite steps to enforce payment in such cases. By Rule 38 (1) of the Magistrates' Courts Rules, 1952, any sum ordered to be paid by a conviction or order of a magistrates' court shall, unless the court otherwise directs, be paid to the clerk of the court. He may therefore correctly describe himself as the complainant for the purpose of any judgment summons necessary to enforce payment.

What is to be done with the money recovered? It certainly does not belong to the clerk. Whether or not it is regarded as in the nature of a fine and so within the ambit of section 27 (1) (*a*) of the Justices of the Peace Act, 1949, it is clearly caught by the words "all other sums received by a justices' clerk by reason of his office . . ." in section 27 (1) (*b*) of that Act and so, in any case, must be paid to the Home Office. [A. E. Jones.]

Case and Comment

[Reports of cases included here are prepared by C. J. ELLIS, *Barrister-at-Law*, unless otherwise appears]

Drunkenness.—See R. *v.* RIMMER, below; R. *v.* REECE, p. 867, below; R. *v.* VERMEULEN, p. 870, below.

Evidence—*Admissibility—evidence tending to show prisoner's general bad character*

R. *v.* KHAN, 1954 (2) S.A. 340 (South Africa: Appellate Division of the Supreme Court).

The appellant was convicted on a charge of murder. At the trial the prosecution alleged that the killing took place in the course of a robbery and evidence was given by two witnesses that a few months before the alleged murder the appellant had repeatedly asked them to join him in robbing the deceased. On appeal it was contended that such evidence was inadmissible since it tended to show the accused to be of a general bad character or prone to commit the type of offence with which he was charged.

Held, dismissing the appeal, that evidence as to the appellant's intention or desire to rob the deceased was relevant to the main issue and therefore admissible; it did not become inadmissible because incidentally it might have the effect contended. The court approved the principle expressed in *Noor Mohamed* v. *R.* [1949] A.C. 182 at 192 that " in all such cases the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it is professedly directed, to make it desirable in the interest of justice that it should be admitted."

COMMENTARY. See Archbold, 33rd ed., 368.

Evidence — *Admission* — *admission made by person under influence of drink*

R. *v.* RIMMER, 1954 (1) S.A. 469 (South Africa: Cape Provincial Court).

R. pleaded not guilty to a charge of driving a motor vehicle on a public road while under the influence of intoxicating liquor. The Crown called a police witness who said that when he interviewed R., soon after receiving a report about the car, R. said that he was the driver and the owner of it. The policeman said that R. was very drunk. There was no other evidence that R. was the driver. R. was convicted and appealed on the ground that the Crown had not established beyond reasonable doubt that he was the driver of the car in question.

Held, dismissing the appeal, that R.'s statement that he was the driver of the car was an admission and not a confession. An admission made by a person while under the influence of intoxicating liquor is admissible : *R.* v. *Spilsbury* (1835) 7 C. & P. 187.

COMMENTARY. In *R.* v. *Spilsbury*, *supra*, Coleridge J. said: "I am of the opinion that a statement being made by a prisoner while he was drunk is not therefore inadmissible as evidence against him; and that to render a confession inadmissible it must either be obtained by hope or fear."

Evidence—*Corroboration—corroboration of evidence of child complainant*

R. *v.* FARRELLY [1954] N.Z.L.R. 1 (New Zealand : Court of Appeal).

The accused was charged with indecent assault on a girl of six years. At the trial the judge warned the jury of the danger of convicting the accused on the uncorroborated evidence of the child. He directed them that corroboration was necessary on two points, namely whether the offence was in fact committed and whether the accused was the person who committed it; the medical evidence on the first point was unquestioned and was corroboration of that point; on the second point there was no corroboration. The accused appealed on the ground that the judge had misdirected the jury; as corroboration was required of both points the evidence of the child should have been treated as uncorroborated in every particular.

Held, dismissing the appeal, that there had been no misdirection. It would have been wrong for the judge to say there was no corroboration, and it was sufficient to say as he did that there was no corroboration of the allegation that it was the accused who committed the assault.

COMMENTARY. See Archbold, 33rd ed., 477; Stone, 86th ed., 569.

Magistrates' Court—*Committal to quarter sessions—validity*

R. *v.* LOZYNSKYJ [1] (Lincoln City Quarter Sessions : W. A. Fearnley-Whittingstall, Q.C., Recorder : September 30, 1954).

On September 21, 1954, the defendant appeared at a magistrates' court for the County of Lincoln (Parts of Kesteven) to answer a summons charging him with arson of goods in a building, contrary to section 7 of the Malicious Damage Act, 1861. The magistrates were sitting at an occasional courthouse at 2 Mint Street, Lincoln, which is geographically situated within the City of Lincoln. The magistrates took depositions and administered the statutory cautions in a regular manner. They were informed that the next court of quarter sessions for the County of Lincoln (Parts of Kesteven) would be held at Sleaford on October 15 and were also informed that an important witness for the prosecution was due to emigrate to Canada on October 4. They accordingly committed the defendant for trial at the next court of quarter sessions for the City of Lincoln, due to be held on September 30.

When the defendant was arraigned at Lincoln City Quarter Sessions, his counsel moved to quash the indictment, on the ground that section 10 (1) (*a*) of the Magistrates' Courts Act, 1952, rendered the committal invalid. Counsel for the prosecution referred to section 9 of the Act, and contended that the power of committal to a convenient court given by section 10 (1) was additional to, and not in substitution of, the general provisions of section 11 (1) of the Criminal Justice Act, 1925, with regard to venue, and that, as the defendant had appeared in answer to a summons lawfully issued at a place geographically situate within the City of Lincoln, the last-named subsection rendered the committal valid. He called the attention of the court, however, to section 123 of the Magistrates' Courts Act, 1952, dealing with occasional courthouses, subsection (3) of which provides : " An occasional courthouse may be outside the petty sessions area for which it is appointed, and if so shall be deemed to be in that area for the purpose of the jurisdiction of the justices acting for that area "; but contended that that subsection merely gave the justices jurisdiction to act and did not affect their powers of committal.

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[1] For the prosecution: *T. R. Fitzwalter Butler* (instructed by Langley, Phillips & Coleman, Lincoln). For the defence: *E. Ling Mallison* (instructed by A. T. Clark, Lincoln).

Held, that the last-mentioned subsection governed the matter in issue and rendered the committal invalid. The indictment was therefore quashed. [Reported by T. R. Fitzwalter Butler, *Barrister-at-Law*.]

COMMENTARY. The Magistrates' Courts Act, 1952, s. 10, provides: " (1) The magistrates' court before which any person is charged with an offence may, instead of committing him to be tried at the assizes or quarter sessions for a place to which but for this section he might have been committed, commit him to be tried at the assizes . . . or . . . quarter sessions for some other place, if it appears to the court . . . to be more convenient . . . with a view either to expediting his trial or saving expense. . . . Provided that the power given by this section shall not be exercised (*a*) unless at the time of committal it appears to the court unlikely that . . . the next assizes or . . . quarter sessions, to which but for this section he might have been committed will be held within one month from that date."

The Criminal Justice Act, 1925, s. 11 (1) provides: " A person charged with any indictable offence may be proceeded against, indicted, tried and punished in any county or place in which . . . [he] has appeared in answer to a summons lawfully issued charging the offence as if the offence had been committed in that county or place. . . ."

See Archbold, 33rd ed., 38, 99; Stone, 86th ed., 48, 152.

Manslaughter. See R. *v.* REECE, below.

Murder—*Drunkenness—direction to jury*

R. *v.* REECE [1954] O.W.N. 496 (Canada: Court of Appeal).

The accused was charged with murder. In his defence it was contended that at the time of the killing he was so intoxicated that he was completely incapable of forming the necessary intent. The judge directed the jury that " before a jury can say that a man who is accused of this crime had no intent the jury has to find that his mind was a complete blank " and that the accused was still criminally responsible if he knew, however hazily, what he was doing. The accused was convicted. On appeal :—

Held, directing a new trial, that there had been a misdirection in that the judge had not made it clear to the jury that they should convict the accused of manslaughter only if they were of the opinion that, although his mind was not a complete blank, he was so drunk as to be incapable of forming the intent necessary for murder.

COMMENTARY. See Archbold, 33rd ed., 20; Glanville Williams, *Criminal Law*, The General Part, §§ 107–112.

Murder—*Intent—wound not inflicted in vital part of body*

R. *v.* DU RANDT, 1954 (1) S.A. 313 (South Africa: Appellate Division of the Supreme Court).

A and B were charged with X's murder. A and B went to a house thinking it was that of the local bank manager, intending to intimidate him with an open knife and compel him to open the bank so that they could rob it. A struggle ensued after which A and B made their escape, leaving the occupier mortally wounded; death resulted from a laceration of the femoral vein. A and B were both convicted of murder. On appeal, it was submitted that it had not been proved that the wounds were inflicted with intent to kill, because they were not in a vital part of the human body.

Held, dismissing the appeal, that the wounds were inflicted intentionally with a dangerous instrument and recklessly as to whether death ensued or not; the fact that the wounds were not in a vital part of the body was irrelevant.

Obscene Publications—*Test of obscenity—classics*

POLICE *v.* FOULDES [2] (Wiltshire Quarter Sessions: A. W. Northey, Esq., Deputy Chairman: September 15, 1954).

The appellant, a newsagent and bookseller, appealed to quarter sessions against the decision of Swindon magistrates that an edition of *The Decameron* by Boccaccio, on sale for three guineas, should be destroyed as obscene.

For the prosecution it was contended that it was right that this book, said to have great literary merit, should be available to students of Italian social history, but when it was put into the setting of this newsagent and bookseller's shop in the Commercial Road, Swindon, its purpose was to excite all those persons likely to be corrupted. Some of the stories in the book itself were obscene in themselves, and when placed in the setting in which it was found, among books clearly obscene, it displayed an obscene interest in sexual matters. Therefore the book being found where it was came within the test of obscenity laid down in *R.* v. *Hicklin* (1868) L.R. 3 Q.B. 360, in that its tendency was "to deprave and corrupt those whose minds are open to such immoral influences and into whose hands [it] may fall."

It was contended for the appellant that the book was not obscene, because it contained little of that reference to sexual aberration nor the dwelling upon those details of sexual intercourse which are to be found in more modern books which have been destroyed and have been classed as filth. The book was not proper to be prosecuted as an obscene libel within section 1 of the Obscene Publications Act, 1857. Further the price of the book put it outside the reach of most ordinary people who went into the shop at Swindon.

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[2] For the prosecution: *J. T. Molony* (instructed by the Director of Public Prosecutions). For the appellant: *J. Stephenson* (instructed by Lemon, Humphreys, Parker and Mather, Swindon).

Held, the court was not satisfied that *The Decameron* was obscene and the appeal would be allowed with costs.

COMMENTARY. The subject of obscenity and the law is fully considered in an article on p. 817.

See Archbold, 33rd ed., 1398; Stone, 86th ed., 1689.

Road Traffic—*Public service vehicle—right to enter between advertised stops*

POLICE *v.* OKOUKWO[3] (Marlborough Street Magistrates' Court: Mr. Paul Bennett V.C.: August 30, 1954).

The defendant was charged with using insulting words and behaviour. He boarded a bus which was nearly full when it stopped at traffic lights about fifty yards from a compulsory stop. There was a queue at that stop and the conductor requested the defendant to get off; when he refused the conductor called a policeman, whereupon the alleged offence occurred. In evidence the conductor said that he thought that he had authority to eject the defendant under the Regulation of Traffic (Formation of Queues) (No. 2) Order, 1942 (S.R. & O. No. 1691), paragraph 5 of which provides "A person shall not enter . . . a vehicle when it is at or is approaching and about to stop at a stopping place before any other person . . . who was waiting in a queue or line at that stopping place." It was submitted by counsel holding a watching brief for the London Transport Executive that the implied invitation to board a bus being driven on a route between advertised stops was an invitation to board at those stops only; no licence was given either expressly or by implication to board elsewhere, therefore the defendant could be treated as a trespasser.

Held, that at the time the defendant attempted to board the bus it was not "approaching and about to stop at a stopping place" and therefore the Order of 1942 did not apply. A passenger may at his own risk get on a bus at traffic lights or whenever it is stationary. The conductor had no right to eject the defendant from the bus and the case was accordingly dismissed. [Reported by Peter Shier, Barrister-at-Law.]

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[3] The prosecutor and defendant were not represented. For the London Transport Executive: *Peter Shier* (instructed by the Chief Solicitor to the British Transport Commission).

Robbery—*Intent—onus of proof—effect of drunkenness*

R. *v.* VERMEULEN, 1953 (4) S.A. 231 (South Africa : Transvaal Provincial Division Court).

The accused was charged with the robbery of a suit-case, which was found in his possession shortly after it was stolen. When questioned he claimed that it was his own. He pleaded in his defence that he was drunk at the time of the alleged offence and gave evidence that he had been drinking heavily. Evidence was also given that a barman in a hotel had refused to serve the accused on the evening in question because he was drunk, but the accused had walked out of that hotel unaided. The accused was convicted. On appeal :—

Held, drunkenness is not a defence to a charge of stealing unless it can be proved that the accused was so drunk he could not have had the necessary intent. The onus of proving intent is upon the Crown, and in the present case the prosecution had proved that the accused was capable of forming the intent.

COMMENTARY. See Archbold, 33rd ed., 20; Glanville Williams, *Criminal Law*, The General Part, §§ 107–112.

Sentence—*Purposes of—matters to be considered on appeal*

R. *v.* RADICH [1954] N.Z.L.R. 86 (New Zealand : Court of Appeal).

On an application for leave to appeal from a sentence of ten years' imprisonment for manslaughter, the Court of Appeal of New Zealand considered the main purposes of punishment and the grounds on which a court of criminal appeal will reduce a sentence. Fair J., giving the judgment of the court, said :—

"One of the main purposes of punishment is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. In all civilised countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment. If a court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment."

Large expenditure incurred by a person in defending himself should not be considered as a matter of weight in assessing a sentence. Before reducing a sentence, the court should be satisfied that the sentence is manifestly excessive or wrong in principle or there must be exceptional circumstances. Little help is gained by considering other sentences in respect of the same type of offence, for the whole of the surrounding circumstances and the situation of the offender and others have to be taken into account, and these factors vary infinitely.

Trial—*Direction to jury—corroboration of evidence of child.*

See R. *v.* Farrelly, p. 865, above.

Trial—*Evidence prejudicial to prisoner—fresh trial*

R. *v.* Meyer, 1953 (4) S.A. 26 (South Africa : Witwatersrand Local Division Court).

M. was charged with the theft of a number of motor-cars. At his trial the prosecution called as a witness an accomplice, who on being asked where he first met M. replied " In prison." M.'s counsel asked that the jury should be discharged because the evidence suggested that M. had been in gaol.

Held, applying *R.* v. *Firth* (1938) 26 Cr.App.R. 148, that the evidence that M. had been in prison was inadmissible and was prejudicial to the fair trial of the accused and, accordingly, the jury would be discharged.

COMMENTARY. *R.* v. *Firth, supra,* followed the decision in *R.* v. *Peckham* (1935) 25 Cr.App.R. 125, where it was said, " Where a statement with regard to a prisoner's previous record is inadvertently made from the witness box to his prejudice, and his counsel applies for the trial to be begun again before another jury, the court ought to begin the trial again."

See Archbold, 33rd ed., 214.

Weights and Measures—*False scale—scale giving overweight*

DE CAUX *v.* KEARNS AND STANLEY[4] (Southport Magistrates' Court : Mr. D. Warner Bond, Chairman : August 20, 1954).

The defendants were in partnership as greengrocers and were summoned for having in their possession for use for trade a scale which was false, contrary to section 25 of the Weights and Measures Act, 1878. The scale gave one and a-half ounces overweight. It was submitted for the defence, who relied on *Brooke* v. *Shadgate* (1873) L.R. 8 Q.B. 352, that since the scale was overweight there was no case to answer under the section. The prosecution contended that " false " mean " incorrect "; the scale was therefore false within the section and the defendants liable.

Held, that the scale was false within the meaning of the section and although there was no suggestion of fraud on the part of either defendant they were liable. They were each fined £1. [Reported by Messrs. Brighouses, Solicitors.]

COMMENTARY. *Brooke* v. *Shadgate, supra,* was decided under section 3 of the Weights and Measures Act, 1859, which was repealed by the Act of 1878. It was held that section 3 was intended to protect the public against persons selling and did not apply in the case of a seller using a balance unfair to himself.

See Stone, 86th ed., 2396.

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[4] For the prosecution: Miss E. Neville, Solicitor. For the defence: Mr. Roger Hill, Solicitor.

Acts and Orders

Agriculture

SEED POTATOES ORDER, 1954 (S.I. No. 1336): operative October 25, 1954.

The prices and marketing arrangements for seed potatoes of the 1954 crop are prescribed, but sales in lots of less than one ton of one variety are subject to no control.

For penalties for infringements see the Defence (General) Regulations, 1939, reg. 92.

The Order of 1953 (S.I. No. 1519), as amended, is revoked, but without prejudice to any proceedings for its contravention.

Animals

SLAUGHTER OF ANIMALS (PREVENTION OF CRUELTY) REGULATIONS, 1954 (S.I. No. 1280): operative October 1, 1954.

The provisions concerning slaughter-houses and knackers' yards which were contained in Schedule 1 of the Protection of Animals Act, 1911, and Schedule 2 of the Slaughter of Animals Act, 1933, both repealed by the Slaughter of Animals (Amendment) Act, 1954 (see [1954] Crim.L.R. 798), are replaced without alteration except as regards the penalties for infringement; these are now a fine not exceeding £50 or imprisonment for not more than three months or both. No offence is committed if as the result of accident or other emergency infringement is necessary to prevent physical injury or suffering to any person or animal. If a person convicted of an offence under the regulations holds a licence under section 57 of the Food and Drugs Act, 1938, the court may cancel that licence.

Armed Forces

ROAD VEHICLES LIGHTING (SPECIAL EXEMPTION AND AMENDMENT) REGULATIONS, 1954 (S.I. No. 1281): operative October 1, 1954.

Vehicles of the home forces and the visiting forces of Canada and the United States are exempted from the requirements of the Road Transport Lighting Acts, 1927 to 1953, when being used for training on certain special occasions or on authorised manoeuvres; the requirements of the Acts are modified with regard to such vehicles travelling together in convoy, vehicles carrying searchlights and those constructed or adapted for actual combative purposes.

Mechanically propelled vehicles or trailers of visiting forces (see [1954] Crim.L.R. 558) are exempted from Parts 2, 3, 4 and 6 of the Road Vehicles Lighting Regulations, 1954 (S.I. No. 1105; see [1954] Crim.L.R. 767), which relate to lights and reflectors, if they comply with certain requirements of the Road Traffic Convention of 1949.

Food and Drugs

MILK (SPECIAL DESIGNATIONS) ORDERS, (SPECIFIED AREAS) (No. 2) ORDER, 1954 (S.I. No. 1193): operative October 1, 1954; (RAW MILK) (AMENDMENT) REGULATIONS, 1954 (S.I. No. 1267): operative September 30, 1954.

Areas are specified in which special designations must be used for the purpose of sales by retail, other than catering sales, of milk for human consumption. Special requirements are prescribed with regard to a producer's licence to use the special designation "tuberculin tested" in relation to milk produced from controlled herds. Licences are renewable even though they do not apply to attested herds, provided application has been made for registration of the herds under the Tuberculosis (Attested Herds) Scheme, 1950.

For penalties for contravention of the Order or Regulations, see the Food and Drugs Act, 1938, s. 79.

BUTTER (REVOCATION) ORDER, 1954 (S.I. No. 1278); CHEESE (REVOCATION) ORDER, 1954 (S.I. No. 1279): both operative October 1, 1954.

Manufacturers of butter and cheese are not subject to any licensing control in respect of products manufactured after September 30, 1954. The Orders of 1954 (S.I. Nos. 517, 518; see [1954] Crim.L.R. 479) are revoked, but without prejudice to any proceedings for their contravention.

COLD STORAGE (CONTROL OF UNDERTAKINGS) (REVOCATION) ORDERS, 1954 (S.I. No. 1312); (CHARGES) (S.I. No. 1362): both operative December 25, 1954.

Cold storage undertakings of 5,000 cubic feet capacity or over need no longer be licensed; and charges orders (S.I. 1948, No. 1614; 1950, No. 1422) relating thereto are revoked.

The Order of 1948 (S.I. No. 1074) is revoked but without prejudice to proceedings for its contravention.

Intoxicating Liquors

LICENSING (METROPOLITAN SPECIAL HOURS AREA) ORDER, 1954 (S.I. No. 1249): operative October 1, 1954.

That part of the metropolis outside the City of London in which special hours certificates may be granted to hotels and restaurants under section 113 of the Licensing Act, 1953, is extended. The Order of 1949 (S.I. No. 1482) is amended accordingly.

London

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 18 (S.I. No. 1273): operative October 6, 1954; No. 19 (S.I. No. 1319): operative October 18, 1954.

Prescribed routes are detailed for Clapham Common South Side at its junction with Clapham Park Road in Wandsworth and Great Windmill Street in Westminster. Fines not exceeding £5 for a first offence and £10 for a subsequent offence may be imposed for contraventions.

Magistrates

PROBATION (ALLOWANCES) RULES, 1954 (S.I. No. 1205); JUSTICES' ALLOWANCES REGULATIONS, 1954 (S.I. No. 1206); JUSTICES' ALLOWANCES (SCOTLAND) AMENDMENT REGULATIONS, 1954 (S.I. No. 1284): all operative October 4, 1954.

The rates of lodging allowance payable under section 36 of the Justices of the Peace Act, 1949, to justices serving on probation committees or case committees in England and Wales and under section 8 to justices performing duties away from home in England and Wales or Scotland are increased from 30s. to 37s. 6d. where their duties are performed in London and from 23s. to 30s. where they are performed elsewhere.

Magistrates' Courts

JUSTICES OF THE PEACE, 1949 (COMPENSATION) REGULATIONS, 1954 (S.I. No. 1262): operative November 1, 1954.

Provision is made for the payment of compensation to clerks of the peace, justices' clerks and persons employed to assist such officers, who by reason of the abolition of certain commissions, changes in petty sessional divisions and the grouping of clerkships under the Justices of the Peace Act, 1949, have lost their offices or employment or part of their emoluments.

PETTY SESSIONAL DIVISIONS (MONMOUTHSHIRE) ORDER, 1954 (S.I. No. 1217): fully operative January 1, 1955.

The existing divisions of Monmouth and of the borough of Monmouth are combined to form a new division of Monmouth. The areas of other divisions in Monmouthshire are altered.

PETTY SESSIONAL DIVISIONS (DEVON) ORDER, 1954 (S.I. No. 1252): fully operative January 1, 1955.

A number of existing divisions are abolished and new divisions of Bideford, Dartmouth, Great Torrington, Kingsbridge, South Molton, Tiverton and Totnes created. The areas of other divisions in Devon are altered.

Pensions

LOCAL GOVERNMENT SUPERANNUATION (CLERKS OF THE PEACE AND COUNTY COUNCIL) REGULATIONS, 1954 (S.I. No. 1226): operative October 1, 1954.

A clerk of the peace and county council, or one who has held such office since September 30, 1950, and was appointed before the passing of the Local Government (Clerks) Act, 1931, may elect to receive certain benefits under the Local Government Superannuation (Benefits) Regulations, 1954, instead of the benefits to which he is entitled under section 9 of the Act of 1931. The alternative benefits are a pension of one-eightieth of his average remuneration, calculated over three years, for each year of service, lump sum retirement grant, widow's pension and death grant.

Road Traffic

ROAD VEHICLES (REGISTRATION AND LICENSING) (AMENDMENT) REGULATIONS, 1954 (S.I. No. 1270): operative October 1, 1954.

The provision in the Regulations of 1953 (S.I. No. 231) that if the letters and figures on a rear registration mark appear red at night no other rear red light is needed, does not apply to vehicles required to carry two rear red lights at night under section 2 of the Road Transport Lighting Act, 1953 (see [1954] Crim.L.R. 767). [Note. This Regulation answers the point made at p. 768.]

It is no longer necessary for a hackney carriage mark to be put next to the upper edge of the rear registration mark.

The penalty for failing to comply with the Regulations is a fine not exceeding £20.

See ROAD VEHICLES LIGHTING (SPECIAL EXEMPTION AND AMENDMENT) REGULATIONS, p. 873, above.

Salmon and Freshwater Fisheries

ESSEX RIVER BOARD AREA (FRESHWATER FISHERIES) ORDER, 1954 (S.I. No. 1337): operative October, 9, 1954.

The requirements of sections 61 to 64 of the Salmon and Freshwater Fisheries Act, 1954, as to licences to fish for salmon and trout, are applied to licences to fish for freshwater fish in the Essex River Board Area.

Scotland

Food and Drugs

MILK (SPECIAL DESIGNATIONS) (SPECIFIED AREAS) (SCOTLAND) ORDER, 1954 (S.I. No. 1194): operative October 1, 1954.

Areas are specified in which special designations must be used for the purpose of sales by retail, other than catering sales, of milk for human consumption.

For penalties for infringement see sections 24 and 25 of the Milk and Dairies (Scotland) Act, 1914.

Magistrates

As to justices' allowances, see p. 875, above.

Letters to the Editor

Dangerous and Careless Driving

Sir,

With reference to the letter of "Subjicio" on page 731 of the September issue, I do not think his statement that defendants choose to be tried by jury in these cases because they will get a fairer trial than before magistrates should go unchallenged. Nobody that I know who handles these cases takes this view. They rather take the opposite view, that a bench of magistrates who deal with driving cases regularly and are fully experienced in handling them is much more likely to come to a correct conclusion which would involve a conviction than a jury whose members have never been to a court of law before. Such a jury, apart from the fact that it may be unable to build up a case properly from the *admissible* evidence (a very different proposition from all the evidence *available* to both prosecution and defence) is unused to rejecting plausible and improbable defences. Some of these latter do get home in spite of every care being taken in the summing up by the judge or chairman of quarter sessions.

I think the exercise of the right of trial by jury in driving under the influence cases is often made for similar reasons, particularly as most laymen find it impossible to distinguish between "drunkenness" and the "influence of drink," regarding the former as constituting the offence rather than the latter, and placing too great a reliance on medical evidence which has only a remote relation in time to the facts complained of.

Yours faithfully,

GILBERT LEE,

Solicitor.

Old Hill, Staffs.

Books and Periodicals

Reviews:

"Special Reasons." Second Edition. By W. E. Blake Carn. London: Shaw & Sons, Ltd. 1954. 62 pp. (6s. net.)

This little book, described as a handy guide to what constitute special reasons for not imposing disqualifications under the Road Traffic Act, 1930, contains simply brief extracts from the judgments in twenty of the leading cases on this subject.

It differs from the first (1951) edition by the inclusion of *Jones* v. *English* [1951] 2 All E.R. 853, and provides a convenient way of telling at a glance which authorities may apply to a particular problem.

It would make a useful companion to "Road Traffic Prosecutions" reviewed at page 485 of the *Criminal Law Review.*

MICHAEL HAVERS.

The Journal of Forensic Medicine. Volume 1, Nos. 1, 2 and 3. Edited by H. A. Shapiro, PH.D., M.B., F.R.S.S.AF. Capetown: Juta & Co., Ltd. 1954. (12s. 6d. net; annual subscription £2 2s.)

The *Journal of Forensic Medicine,* a quarterly publication sponsored by the Medico-Legal Society (Johannesburg), is a welcome addition to the relatively few journals specialising in this field where practically every branch of science meets in an endeavour to solve an infinite variety of problems dealing with crime and associated subjects.

Volume I, *No.* 1

Among the eight articles in Volume I reports on the pathological findings in a series of sudden and unexpected deaths in infancy is of interest in that so often a child found dead in bed face downwards and with its face beneath the bedclothes has died from a natural disease process and not from asphyxia, as may have been suspected. The important point brought out in this article is that the routine naked eye post-mortem inspection of the organ is not enough and histology, bacteriology and serology may all be necessary before coming to the conclusion that simple suffocation was the cause of death.

"X-rays as an aid to medico-legal investigation" is the title of an article showing that when X-rays are applied to a corpse unexpected lethal weapons such as knife blades and bullets may be detected when destruction by fire or other agents of the surface tissues have obliterated the point of entry. The article is illustrated by several complete case descriptions and very striking X-ray photographs.

There are two critical articles discussing in the one case the gauging of the height of the deceased person from the long bones or their fragments and in the second the estimation of age from the suture closure in a skull. Both produce evidence to show that any degree of accuracy is doubtful.

Volume I, *No.* 2

In the editorial is reviewed the modern concepts of asphyxia and an indication that the post-mortem findings, while consistent with asphyxia as commonly understood, are in no sense a positive proof as they occur in a wide range of deaths from other causes. It is suggested that anoxia is a more correct term and death by deprivation of oxygen is classified into five groups, one of which includes the interference with the respiratory tract such as would occur in strangulation.

Dicumarol, one of the modern drugs used in the treatment of thrombosis, requires a very careful control in its administration owing to the possibility of disastrous side effects if precautions are neglected. Under the heading "Death from Dicumarol Poisoning," the case of *R.* v. *T v.d. M*, is given a very full treatment; there is an account of the arguments produced in court to decide the question of criminal negligence. Distinction was drawn by the judge in the summing up between gross negligence as defined in English law and negligence according to the Roman-Dutch law which was applicable in the case before the Supreme Court of South Africa.

A second article deals with the pharmacological and toxicological aspects of dicumarol with detailed descriptions of the risks that are taken in its use and the investigations necessary to prevent overdosage which may lead to fatal haemorrhage.

The use of instruments recording changes in pulse rate, respiration and blood pressure in the questioning of suspected criminals, the so called Lie Detector procedure, is the subject of a critical account which covers various methods employed in the objective detection of lying as applied in the United States.

Volume I, *No.* 3

In Volume I, No. 3, "Legal relations of the mentally ill" offers much material for reflection and guidance in cases which involve a diagnosis or verdict of mental abnormality. It pleads for the separation of the findings of a jury with regard to the fact that an offence has been committed from the question of responsibility which can only be determined by the observation of experts in mental illness. The article deals at length with several aspects of mental illness including criminal offences and circumstances relating to the validity of contracts and wills.

"Medico-legal mythology" is a discussion and criticism of what are described as popular forensic fallacies, and evidence is produced to show that many of the accepted dogmatic statements of the textbooks are erroneous. These include the diagnosis of live or still birth by microscopic examination of the organs; the determination of age of a foetus from measurements and the appearance of ossification centres in the bones; the fixing of the time of death by the onset of rigor mortis and by body temperature; specific tests for human blood; the alleged preservation of the body by arsenic; and the liquidity of post-mortem blood in asphyxia. The article suggests that a more critical attitude should be displayed as to what is described as the "spell binding influence of the printed word."

The possibility of the presence of alcohol in the corpse being due to post-mortem fermentation is illustrated by a case in which as much as 0·3 per cent. of alcohol was found in the pleural fluid where the deceased was known not to have had any alcoholic fluid for several days and the presence of the alcohol was ascribed to the post-mortem activity of a fungus.

H. E. Archer.

Questions and Answers on Police Duties. Omnibus edition. By C. C. H. Moriarty, C.B.E., LL.D. London: Butterworth & Co. (Publishers), Ltd. 1954. v and 175 and (index) 7 pp. (9s. 6d. net.)

It would be interesting to incarcerate in an examination room a handpicked dozen of the best brains in the legal profession and require them to answer the 602 questions which this formidable little book poses and answers. This is not to say that it is recommended reading for lawyers, eminent or otherwise, except possibly as the basis for a parlour-game this Christmas. One can easily visualise Uncle James (of the County Court Bench) being floored by "What are the meanings of . . . (a) Q.Q. (b) S.H.S. . . . when displayed on the outside of a motor-vehicle?" (p. 161).

After a few more of this ilk, even though the proceedings be leavened with light relief by questions such as: "John Smith informs you that a pig on his premises has died, covered with red spots. What would you tell him to do . . .?" (p. 126), the party is likely to be too unnerved to answer correctly: "How would you deal with . . . a shop selling a motor-tyre at 10 p.m.?" To which the blessed answer begins, in full accord with common sense, "Take no action . . ." (p. 164).

For the ambitious police officer, for whom this volume is primarily intended, it is of course extremely valuable; particularly as one imagines that the author has inside knowledge of the style and standard expected by police examiners. After an initial page of eminently sound "Advice to Candidates" the author divides the work into three sections headed *Criminal Law* (179 questions), *Evidence and Procedure* (221) and *General Statutes* (202 questions). The answers given are blunt and succinct: the delicacy of diction demanded of an undergraduate in the first class is not aimed at. It is to be regretted that the brevity achieved occasionally shades off into inadequacy and even inaccuracy. Compare the following two answers to a question:—

"How may a convicted felon, apart from any punishment for his crime, be made to suffer as regards his property?"

Answer *A*:

1. Under the Forfeiture Act, 1870, a felon
   (a) forfeits any public pension, etc. (section 2).

(b) may be ordered by a Court of Quarter Sessions or Assize to pay a sum not exceeding £100 to someone by way of compensation for his loss of property (section 4: extended to Magistrates' Courts by section 34 of the Magistrates' Courts Act, 1952).

2. Under the Larceny Act, 1916, where stolen, etc., property is returned to the owner by an innocent purchaser, the latter may be paid a sum not greater than the purchase price out of moneys found on the person of the thief, etc. (section 45 (3): extended to Magistrates' Courts by section 33 (2) of the 1952 Act).

3. Under the Criminal Justice Act, 1948, an offender who is granted a conditional or absolute discharge or who is put on probation may be ordered to pay such damages and compensation (limited in magistrates' courts to £100) as the court thinks reasonable (section 11 (2)).

4. Under the Costs in Criminal Cases Act, 1952, a convict may be ordered to pay the whole or any part of the costs (sections 2, 3 and 6).

Now, Answer *B*:

Under the Forfeiture Act, 1870, a convicted felon may be ordered to pay the costs of the prosecution. The court may also order him to pay damages not exceeding £100 for any loss of property which the felony has caused (Magistrates' Courts Act, 1952, s. 34). See also section 11 of the Criminal Justice Act, 1948.

Answer *A* is a suggested fair copy: Answer *B* is that given in the book (at p. 2). Minor disapproval must also be accorded the misprint of 34 for 64 (p. 2, line 10), the effective duplication of questions 34 (Section I) with 202 (Section III), the technical insufficiency of answer 215 in Section II (see section 21 of the Act of Supremacy, 1558), and the unfortunate wording of answer 9 in Section I—wherein it is suggested that section 44 of the Larceny Act, 1916, justifies a conviction for larceny on facts showing embezzlement.

Finally, the diligent examinee should note the impact of *R.* v. *Newland* [1954] 1 Q.B. 158; 37 Cr.App.R. 154, on *R.* v. *Manley* [1933] 1 K.B. 529; 24 Cr.App.R. 25, and adjust his answer to question 111 in Section I accordingly.

EDWARD JACKSON

Archbold's Criminal Pleading, Evidence and Practice. Third Cumulative Supplement and Noter-up to the thirty-third edition. By T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. London: Sweet & Maxwell, Ltd. (Supplement free for 1954. Noter-up service, 7s. 6d. a year extra.)

This Supplement and Noter-up bring the book up to date to September 1, 1954. They contain notes of all important recent criminal cases, many of which have been reported in the *Criminal Law Review.*

Books Received:

Harris's Criminal Law. Nineteenth edition. By H. A. Palmer, M.A. and Henry Palmer, M.A. London: Sweet & Maxwell, Ltd. 1954. xlviii and 683 and (index) 24 pp. (32s. 6d. net.)

The English Legal System. By A. K. R. Kiralfy, PH.D., LL.M. London: Sweet & Maxwell, Ltd. 1954. xxiv and 398 and (index) 10 pp. (27s. 6d. net.)

Crime and the Services. By John C. Spencer, M.A., PH.D., J.P. London: Routledge & Kegan Paul, Ltd. 1954. xii and 288 and (bibliography) 12 and (index) 6 pp. (28s. net.)

The Law of Road Traffic. By M. R. R. Davies, PH.D.(Cantab), LL.M. (Leeds), D.P.A.(Lond.). London: Shaw & Sons, Ltd. 1954. xlviii and 328 and (index) 20 pp. (30s. net.)

Parole and After-Care. United Nations Publication, New York. London: H.M.S.O. 1954. 86 pp. (5s. net.)

The Roots of Crime. Edited by the late Sir Norwood East, M.D., F.R.C.P. London: Butterworth & Co. (Publishers), Ltd. 1954. ix and 173 and (index) 8 pp. (30s. net.)

Police Law. Thirteenth edition. By C. C. H. Moriarty, C.B.E., LL.D. London: Butterworth & Co. (Publishers), Ltd. 1954. xx and 567 and (index) 34 pp.

Articles:

Police College Magazine, Vol. 3.

Police developments in the United States, p. 223.
Fines on the spot, p. 232.
Police administration, p. 246.
Police and the protection of wild birds, p. 260.
Our police forbears, p. 265.
Search and seizure, p. 273.

The Magistrate, Vol. 10.

Fourth international congress of juvenile court judges, p. 182.

Solicitors' Journal, Vol. 98.

The definition of "road" (in the Road Traffic Acts), p. 641.

Law Journal, Vol. 104.

The Pool Betting Act, 1954, p. 580.
Some thoughts on the criminal statistics, p. 597.

Law Times, Vol. 218.

Magisterial notes, p. 133.
Constructive housebreaking, p. 147.
Obscene publications—a contrast in procedure, p. 170.

Justice of the Peace, Vol. 118.
The magistrates' clerk, p. 574.
Lights on vehicles, p. 588.
Proof of other offences admissible evidence as to credibility, p. 602.
Birth and early history of the Leicestershire constabulary, p. 604.
Disqualifications for driving offences, p. 618.
Stealing or receiving? The court and alternative charges, p. 635.

Police Review, Vol. 62.
The vanishing recruit (police recruitment), p. 646.
Metropolitan Commissioner's report for 1953, pp. 648, 684.
Framing the charge, p. 668.
The next step at the Police College, p. 704.
Weights and measures, p. 718.
Larceny, p. 720.

Police Chronicle.
Is it fact or fiction (compensation for malicious damage), September 17, 1954, p. 3.

THE

CRIMINAL LAW REVIEW

Editors

JOHN BURKE and PETER ALLSOP, M.A.

Barristers-at-Law

Editorial

Juries

Earlier this year ([1954] Crim.L.R. 660) the Lord Chief Justice suggested that the number of jurors should be reduced from 12 to 7. He returned to this suggestion in his speech of welcome to the new Lord Mayor on November 9,[1] but only as an alternative to permitting a majority verdict both in civil and criminal cases. He did not suggest that a bare majority should suffice, but he considered that there would not be any real risk of injustice if the dissentients were not more than one or two. In Scotland a majority of 8 to 7 (in a jury of 15) could return a valid verdict and he proposed that the law of England should permit a majority of 9 to 3; weight was added to this proposal by the fact that since 1879 by far the greater number of indictable offences were tried by justices who could decide by a majority.

Another matter which Lord Goddard raised for consideration was whether, in the event of a juror or jurors having to be discharged, the court should not have power to allow the case to proceed, provided the jury were not reduced below a certain number.

After-care and Drunkenness

These two very different topics are the subject of reports issued recently, the report of the Council of the Central After-Care Association for 1953 and that on Offences of Drunkenness,

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[1] See *The Times*, November 10, 1954, and correspondence in *The Times*, November 11 and 15.

1953 (Cmd. 9284). The most interesting feature of the After-Care Association's report is the reference to the experiment being carried out at Bristol prison with certain carefully selected preventive detention prisoners. Cautiously the report says: "So far as it has gone . . . the scheme shows good promise of success" and further, that if the change of heart in the men concerned endures "this experiment may point the way to the solution of the problem of adjusting to normal life the institutionalised recidivist discharged from a long sentence."

The conclusion to be drawn from the report of the Director of the Borstal division of the After-Care Association is not that juvenile crime arises from unalleviated high spirits of youth but from apathy and emptiness of mind. The problem seems "to be not so much to restrain recklessness as to stimulate normal initiative: not so much to control a misdirected energy as to fill a vacuum."

For the first time since 1946 the number of offences of drunkenness failed to increase and in 1953 showed a reduction of 314 to 53,574. This and other interesting facts can be gleaned from the tables contained in the report for 1953.

Theft and the retention of wages

The practice, which exists in some trades, of keeping a week's wages in hand was considered to have worked a great hardship in two cases recently heard by the Court of Criminal Appeal.[2] In both cases the appellants had been released from prison and had found work, but because a week's wages had been held back they stole to get food. In one case a sentence of seven years' preventive detention was varied to one of three years' probation, in the other a sentence of two years' imprisonment was varied to one of two years' probation.

Horror comics

The Home Secretary is considering the problems raised by the importation of certain American children's comics. He has received a deputation from the Archbishop of Canterbury concerning this matter and will try to present some report on it to the House of Commons before Christmas. It is, however, difficult to differentiate between what is objectionable and what is not, and to find a method of banning only objectionable comics.[3] Government powers of import restriction cannot be used as a means of imposing a form of censorship.[4]

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[2] *R.* v. *Smith*, *The Times*, October 12; *R.* v. *Drury*, *The Times*, October 26.

Police inquiries on behalf of foreign police

In connection with the prosecution of Mr. Owen Lattimore for perjury, the United States Federal Bureau of Investigation asked the English police to obtain certain information for them. Inquiries were made by a metropolitan police officer, no American official being present. There is a standing arrangement whereby the police in this country assist the police of other countries in making inquiries in criminal cases and this case was regarded as a routine matter. It was not, therefore, brought to the attention of the Commissioner of Police or reported to the Home Office. In future, however, no action will be taken by the police in any comparable case until the matter has been considered at a high level.[5]

Police recruitment

There is still a serious shortage of men in the police force, despite an increase in the number of police officers compared with before the war, and although an increase in the civilian clerical and ancillary staffs has released more officers for proper police duties. This deficiency is mainly caused by the increased responsibilities of the police. Reviewing the conditions of service of the police recently, the Home Secretary stated that the question of police pensions is constantly under review. He also drew attention to the system of staggered shifts adopted by some forces which to some extent eases the problem of night duty.[6]

Prisons

The Prison Commissioners have announced that Nottingham prison is to be used for preventive detention prisoners instead of for corrective training. This is because Parkhurst prison is full and because of the decline in sentences for corrective training.

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[3] H.C. Debates, Vol. 531, col. 1378, October 21, 1954.

[4] H.C. Debates, Vol. 532, col. 204, November 2, 1954.

[5] H.C. Debates, Vol. 531, col. 298, October 28, 1954.

[6] H.C. Debates, Vol. 531, cols. 1721 *et seq.*, October 25, 1954.

Who is "Regina"?

A correspondent writes: "A short time ago I had occasion to write to a person with regard to the reimbursement of compensation in respect of a case before my court of quarter sessions and the letter was headed, as is customary, 'Regina *v.* [Jones].' The reply, from a gentleman of foreign extraction, includes the sentence 'So far as I am concerned, neither [Jones] nor Regina are acquaintances of mine.'"

Judicial appointments

Mr. Justice Parker has been appointed a Lord Justice of Appeal in succession to Lord Somervell of Harrow and Mr. John Percy Ashworth has been appointed a judge of the High Court in his place.

Subscribers and others are invited to submit for publication articles and letters on matters of interest within the scope of this Review. They should be sent to the EDITOR, *Criminal Law Review*, 3 CHANCERY LANE, LONDON, W.C.2. *Every effort will be made to return drafts or unsuitable copy but no guarantee can be given in this respect.*

Books for review should be sent to the Publishers at the above address.

The Persistent Offender

By T. E. JAMES, M.A., B.C.L., *Barrister-at-Law*

In considering the history of an idea it is unwise to point to any particular person or event as marking the commencement of its development. Nevertheless, it may be said with some degree of accuracy that the Report of the Committee on Prisons, 1895, had a very considerable influence on the modern treatment of the persistent or habitual criminal. It was this Committee which expressed the well-known opinion that the majority of habitual criminals are made between sixteen and twenty-one years of age. Modern opinion would seem to place the respective ages somewhat earlier. The Committee recommended a separate form of sentence and treatment for the habitual offender. The Prevention of Crimes Act, 1908, dealt with this aspect of the Committee's recommendations, and also with the young offender of this class. As a result the modern Borstal training and the present modified treatment of the habitual criminal came into existence. The Borstal training is aimed at cutting off the supply at the source, as Sir Lionel Fox, Chairman of the Prison Commission, says in his book *The English Prison and Borstal Systems* (Routledge and Kegan Paul, 1952). The current law on this aspect is contained in the Criminal Justice Act, 1948, as amended by the Prison Act, 1952. The attempt to deal with the habitual criminal by the 1908 Act was not so successful. Norval Morris, in his book on *The Habitual Criminal* (Longman, Green & Co., 1951) refers to the 1948 legislation which heralded the burial of the 1908 experiment then already moribund. The present law on this aspect is likewise embodied in the Criminal Justice Act, 1948, as amended by the Prison Act, 1952. The modern sentences of corrective training and preventive detention are adopted from the recommendations of the Report of the Departmental Committee on Persistent Offenders, 1932 (H.M. Stationery Office, Cmd. 4090). At the end of the scale of modern treatments, comprising probation, the fine, attendance at an Attendance Centre, detention in a Detention Centre and training at an Approved School or Borstal, come sentences of imprisonment, corrective training and preventive detention.

Section 21 of the Criminal Justice Act, 1948, lays down the requirements to qualify an offender for a sentence of corrective training or preventive detention. The former is applicable to persons over twenty-one years of age who have been convicted on indictment of an offence punishable with imprisonment for two years or more, and who have already been convicted at least twice since attaining seventeen years of age for offences likewise punishable on indictment. Then, the court being satisfied that it is expedient with a view to the reform of the offender and the prevention of crime may impose a sentence of corrective training of two to four years in duration. Sentences of preventive detention, for five to fourteen years' duration, may be imposed if the court is satisfied that it is expedient for the protection of the public. In such a case the offender must be over thirty years of age, and the offences must be similar to those qualifying for corrective training except that there must have been three previous convictions, two of which resulted in sentences to Borstal training, imprisonment or corrective training.

Before either of these sentences is passed the court is directed by section 21 (4) of the Criminal Justice Act, 1948, to consider the report of the Prison Commissioners on the suitability of the offender for such treatment. A copy of this report must be given to the offender or to his legal representative (section 21 (5) of the Criminal Justice Act, 1948). In this connection, the attention of the court is drawn not only to the mental and physical condition of the offender but also to his general suitability. The Court of Criminal Appeal has held that these sentences should not be passed in the face of a report from the Prison Commissioners that the offender is unsuitable (*R.* v. *Murray* [1951] 1 K.B. 391; 34 Cr.App.R. 203). It is envisaged that, in a wholly exceptional case, the report of the Prison Commissioners as to unsuitability may be overridden, but the Court of Criminal Appeal regards such action as most undesirable. One of the reasons is the danger of overcrowding the limited accommodation available for corrective training and thereby undermining the remedial value of the sentence (*R.* v. *Shepherd* (1950) 34 Cr.App.R. 236).

There is provision in section 26 of the Prison Act, 1952, for a person sentenced to corrective training or preventive detention to be released on licence in accordance with the Prison Rules, 1949. In such circumstances he must comply with any requirements specified in the licence until the expiration of his sentence. The Prison Commissioners may, if they consider it necessary, place him during such time under the supervision of some specified person or society. Further, there is provision in the 1952 Act for a person released on licence and failing to comply with its requirements to be recalled to prison. In effect, prisoners discharged from corrective training or preventive detention are placed under the care and supervision of the Central After-Care Association.

The emphasis placed upon after-care in general is brought out clearly in the Report of the Committee on Discharged Prisoners' Aid Societies (H.M. Stationery Office, 1953, Cmd. 8879). This report recommended that in future Aid Societies should shift the emphasis of their interest from aid on discharge to personal after-care (paragraph 89). An offender on the road to preventive detention, that is a person who has been convicted on indictment of an offence punishable with imprisonment for two years or more, and who has either been convicted on two previous occasions and sentenced to Borstal training or imprisonment, or who has been previously sentenced to corrective training, falls within section 22 of the Criminal Justice Act, 1948. This section, read with section 29 of the Prison Act, 1952, requires the court, if it passes a sentence of twelve months or more, to order the offender on his discharge from prison to keep some approved society informed of his address for a period of twelve months. Though this is not exactly after-care, nevertheless it does enable helpful contacts with the offender and a careful watch on his movements to be maintained. Section 22 does not compel the court to make such an order if, having regard to the circumstances, including the character of the offender, it should otherwise determine. However, should the court refrain from making an order, then it should state expressly that it is so doing and should give its reasons. Otherwise, on appeal, it might be thought that the court had omitted to consider the requirements of the section (*R.* v. *Mayo* (1951) 35 Cr.App.R. 153). In *R.* v. *Mayo* the offender was sentenced to five years' imprisonment for incest and the case was one to which section 22 of the 1948 Act applied. Having regard to the nature of the crime and to the length of the sentence imposed, the judge refrained from making such an order. The fact that the machinery of finding the prisoner's address after discharge would be an embarrassing burden to the society concerned is no valid ground for failure to make an order under section 22. (*R.* v. *Keeler* (1949) 34 Cr.App.R. 26). An offender, who qualifies under section 22 of the 1948 Act and who is sentenced to corrective training, thereby comes automatically under the after-care provisions relating to corrective training; therefore, on his leaving prison, an order under section 22 is not appropriate (*R.* v. *Speakman* (1949) 34 Cr.App.R. 24). But section 22 (1) of the 1948 Act is mandatory and, in the absence of special reasons, the order ought to be made (*R.* v. *Keeler* above).

Qualifications for sentences of corrective training and preventive detention

The technical qualifications for sentencing an offender to corrective training or preventive detention are laid down in section 21 (1) and (2). In the former case, the court has to be satisfied that it is expedient for the reformation of the offender and the prevention of crime that such a sentence be passed and, in the latter case, that detention in custody for a substantial time is expedient for the protection of the public. But the court should weigh up the facts and the circumstances in each case and not pass such sentences merely because the technical requirements are fulfilled or, indeed, because the Prison Commissioners report that the offender is fit for such a sentence (*R.* v. *Apicella* (1949) 34 Cr.App.R. 29).

Convictions outside Great Britain, that is, England, Scotland and Wales, do not appear to rank as previous convictions for this purpose. A conviction in Northern Ireland certainly does not rank as a qualification for founding a sentence of preventive detention. This was decided in *R.* v. *Murphy* (1949) 34 Cr.App.R. 18, when the Court of Criminal Appeal stated that convictions in any of the dominions or colonies, in a foreign country or before a court-martial are not previous convictions for the purpose of founding a sentence of corrective training or preventive detention.

The meaning of "previous conviction" for the purpose of section 21 (1) and (2) and section 22 (1) was again considered in *R.* v. *Rogers* [1953] 1 Q.B. 311; 36 Cr.App.R. 203. Each conviction must be at a separate court, "that is to say, two sentences passed on the same man at the same sessions or the same assizes will not rank as passed on two separate occasions; they must be at separate assizes or separate quarter sessions" (Lord Goddard C.J. in *R.* v. *Rogers*, at p. 316).

The placing of an offender on probation does not rank as a conviction qualifying for sentence under section 21 of the Criminal Justice Act, 1948 (*R.* v. *Stobbart* (1951) 35 Cr.App.R. 125). This follows from the wording of section 12 (1) of that Act which provides that a conviction of an offence, for which a probation order (or an order for an absolute or conditional discharge) is made, shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made. Lord Goddard C.J., commenting on the result, pointed out that it was strange that, because a man was placed on probation, he would not be subject to a sentence of corrective training, since it would appear to be just the kind of treatment by which he might be benefited. In *R.* v. *Stobbart*, the Court of Criminal Appeal substituted a sentence of two years' imprisonment for the sentence of corrective training. However, a conviction followed by a binding over, as distinct from a probation order or an order of absolute or conditional discharge, can be a qualifying conviction under section 21 of the Criminal Justice Act, 1948, for a sentence of corrective training or preventive detention (*R.* v. *Abrahams* (1952) 36 Cr.App.R. 147).

For a sentence of corrective training or preventive detention a person has, *inter alia*, to be convicted on indictment of an offence punishable with imprisonment for a term of two years or more (section 21 (1) (*a*) and section 21 (2) (*a*) of the 1948 Act). A court can pass a sentence of imprisonment at discretion for a common law misdemeanour (*R.* v. *Morris* [1951] 1 K.B. 394; 34 Cr.App.R. 210), but a sentence exceeding two years' imprisonment should only be imposed in serious cases or where the misdemeanour was an attempt to commit a crime and the person convicted of the attempt would have received a severe sentence if he had achieved his purpose (*R.* v. *Higgins* [1952] 1 K.B. 7; 35 Cr.App.R. 130). In *R.* v. *Pearce* [1953] 1 Q.B. 30; 36 Cr.App.R. 149, the offender was convicted of an attempt to do an act, which, if carried out, would have been punishable by twelve months' imprisonment. Lord Goddard C.J. pointed out that though this attempt was a common law misdemeanour and technically punishable by imprisonment at the discretion of the court, it was wrong that a longer sentence should be given than could have been given for the substantive offence. As a result, a sentence of corrective training could not be imposed since the prerequisite of section 21 (1) (*a*) was not satisfied. This reasoning would seem to apply likewise to section 21 (2) (*a*) and to section 22 (1) of the 1948 Act.

As a matter of practice, proof of previous convictions for the purposes of section 21 and section 22 of the Act is required in accordance with section 23. That is, no account is to be taken of any previous conviction unless notice has been given to the offender and to the proper officer of the court, at least three days before the trial, to the effect that it is intended to prove the previous convictions. The offender must be asked whether he admits the convictions, of which he has notice; if he does not, then whether he has been previously convicted is a question for the jury. The Court of Criminal Appeal has stated that it is desirable, but not required by law, to include an averment of the previous convictions in the indictment (*R.* v. *Allen* [1949] 2 All E.R. 808). However, this procedure might cause difficulty because, for example, at a heavy assize or heavy quarter sessions it is not always known when the indictments are drawn that the police are going to put forward previous convictions as qualifying for sentences of preventive detention or corrective training. Therefore, Lord Goddard C.J. pointed out the alternative course that might be adopted, namely, of attaching to the indictment a notice of the intention to prove previous convictions, such notice having been duly served on the prisoner (*R.* v. *Dickson* [1950] 1 K.B. 394; 34 Cr.App.R. 9).

A person may be tried summarily for an indictable offence and be sent to quarter sessions for sentence under section 29 of the Criminal Justice Act, 1948. In such a case, for the purpose of serving the necessary notice three days before trial in accordance with section 23, the proceedings before quarter sessions are regarded as the trial (*R.* v. *Grant* [1951] 1 K.B. 500; 34 Cr.App.R. 230).

Corrective training

"Corrective training is a new name in our penal terminology, but it does not describe any new method of treatment or training: it is the statutory application of an existing method to a category of prisoners selected not by the administrative classification system but by the courts" (Sir Lionel Fox, referred to above).

The sentence of corrective training may be from two to four years' duration at the discretion of the court. The general policy to be observed by the courts when applying this sentence was laid down in *R.* v. *Apicella* (1949) 34 Cr. App.R. 29. Corrective training is regarded as being in the nature of an extension of the principles underlying Borstal treatment. The fact that the technical prerequisites are fulfilled and that the Prison Commissioners report that there is no reason why corrective training should not be given is not enough. The court must weigh up the facts and circumstances of the case and then decide the appropriate sentence. (See also *R.* v. *Barrett* (1949) 34 Cr.App.R. 3).

This sentence may be passed upon an offender over twenty-one years of age. The Court of Criminal Appeal has stated that corrective training should not be imposed, except in exceptional circumstances, upon an offender whose age exceeds thirty-five and, as a general rule, should be imposed only on an offender whose age does not exceed thirty (*R.* v. *Boucher* (1952) 36 Cr.App.R. 152).

Sir Lionel Fox in his book refers to the variable nature of the sentence which the court may pass and points out the administrative difficulties which may arise. Variations in corrective training sentences " cause much resentment among the prisoners " and Governors, " not knowing the mind of the court, can provide no satisfactory explanations in their attempts to secure the co-operation of the disgruntled prisoners; nor do comparisons of the criminal record of the prisoners always avail to clear up these doubts." It is to be observed that the Prison Commissioners do not include any recommendation as to the length of training required in their reports on the respective offenders which they make to the court. With the gradual development of the principles to be followed when the court imposes a sentence of corrective training, this real difficulty in securing the co-operation of the prisoners should be overcome.

In an address to the Society of Public Teachers of Law the Lord Chief Justice expressed regret that the Criminal Justice Act, 1948, had hedged round corrective training as strictly as it has done. Lord Goddard was referring to cases where Borstal training had been given to offenders just under twenty-one years of age or where men of that age were absconders from Borstal. The learned Lord Chief Justice remarked: " Corrective training, which has to be served in prison, should I think be regarded, at any rate in the case of these young prisoners, as a sort of extended Borstal, but a sentence of corrective training cannot be passed on anybody who is not twenty-one " (*The Journal of the Society of Public Teachers of Law*, 1952, pp. 2 and 3).

Some difficulties have arisen in cases where a sentence of corrective training has been given and the prisoner has committed other offences. For example, where a prisoner is committed for trial for one offence, for which he is subsequently sentenced to corrective training, and whilst on bail commits another offence: he is tried for the second offence whilst undergoing the sentence for the first one; what form of punishment can he receive for this second offence? It is now established that sentences of corrective training can run consecutively in the same way as two sentences of imprisonment (*R.* v. *Albury* [1951] 1 K.B. 680; 35 Cr.App.R. 12). Moreover, a sentence of corrective training can be passed to take effect at the conclusion of a prior sentence of imprisonment (*R.* v. *Cannell* (1953) 37 Cr.App.R. 188; see [1954] Crim.L.R. 64). However, a sentence of imprisonment cannot be passed to take effect on the conclusion of a prior sentence of corrective training; otherwise any value derived from the latter treatment might be nullified by the subsequent imprisonment (*R.* v. *Talbot* [1953] 1 Q.B. 613; 37 Cr.App.R. 23). If, however, a prisoner sentenced to corrective training commits a further offence whilst on licence, the court may exercise its discretion as to whether it will impose a sentence of corrective training or of imprisonment for the further offence (*R.* v. *Wilsher* (1953) 37 Cr.App.R. 110). As the Lord Chief Justice pointed out in *R.* v. *Wilsher*, there is no reason why a court should not pass a sentence of imprisonment in such circumstances because it had been shown that corrective training had done no good.

Preventive Detention

Preventive detention under section 21 (2) of the Criminal Justice Act, 1948, is not a substitute for the old sentence of penal servitude (*R.* v. *Askew* [1949] 2 All E.R. 687). It ought to be awarded in cases where, before the 1948 Act, there would probably have been a charge and finding that the prisoner was an habitual criminal; but this sentence is not restricted to cases where under the previous Act an offender could have been convicted as an habitual criminal (*R.* v. *Powell* (1953) 37 Cr.App.R. 185 explaining *R.* v. *Askew*, above, in this respect). Moreover, preventive detention should be regarded as an exceptional sentence and not one to be given in lieu of imprisonment (*R.* v. *Askew*, above). The fact that the offender has the requisite number of previous convictions or that the Prison Commissioners have reported upon him as suitable are not sufficient in themselves to warrant a sentence of preventive detention (*R.* v. *Askew*, above).

Lord Goddard C.J. stated the broad principles upon which the sentence of preventive detention is based in *R.* v.

Churchill [1952] 2 Q.B. 637; 36 Cr.App.R. 107: the object of preventive detention is to protect the public from those who have shown by their previous history that they are a menace to society while they are at large. There comes a time when it is not a question of punishment, for that has been shown to be of no use, and it therefore becomes necessary to put those offenders in confinement so that they can no longer prey upon the public. In such circumstances even spells of honest work in between crimes will not render a sentence of preventive detention inappropriate if the offender has shown by his conduct and history that he cannot be trusted to abstain from crime (*R.* v. *Powell*, above).

The length of a sentence of preventive detention may vary from five to fourteen years according to section 21 (2) of the Criminal Justice Act, 1948. The minimum sentence of five years would, if the prisoner behaved himself, amount to three years and four months. This sentence would be of very little protection to the public against a man steeped in crime. The Court of Criminal Appeal has repeatedly laid it down, however, that, with some exceptions, seven years at least is the irreducible minimum and generally the sentence should be for eight years or longer. The exceptions comprise cases involving sick or elderly offenders whom the court would not wish to spend their last days in prison; then a sentence of five years would be appropriate (*R.* v. *Sedgwick* (1950) 34 Cr.App.R. 156; *R.* v. *Barrett* (1949) 34 Cr.App.R. 3; statement by the Lord Chief Justice, 34 Cr.App.R. 7). The reason for selecting eight years as the usual sentence of preventive detention was explained by Lord Goddard C.J. in *R.* v. *Sedgwick* (1950) 34 Cr.App.R. 156. Under the Prevention of Crime Act, 1908, the court had to pass a sentence of not less than eight years because the statute provided that a period of not less than five years' preventive detention had to be preceded by a sentence of penal servitude, which could not be for less than three years.

In order to answer criticism to the effect that the court wants to pass very long sentences or that it wilfully overlooks the minimum sentence of preventive detention provided by statute, the Court of Criminal Appeal has mentioned in open court certain information obtained by the judges in consultation with the Prison Commissioners. The latter have agreed that if sentences of five years' preventive detention were given it would cause great embarrassment to them, since the places which were intended for sentences of preventive detention were limited in number and five years with remission would be useless for the purpose for which this sentence was designed (*R.* v. *Hewitt and Kinally* (1950) 34 Cr.App.R. 163).

In regard to consecutive sentences, it has been stated by the Court of Criminal Appeal that no difficulty arises in sentencing a person, who is serving a sentence of imprisonment, to preventive detention (*R.* v. *Cannell*, above, a case dealing in fact with corrective training and imprisonment to run consecutively).

The age at which an offender can be sentenced to preventive detention is thirty years. This age must have been attained when the prisoner is tried and sentenced and it does not matter that he had not attained thirty years of age at the time of the commission of the offence (*R.* v. *Fallows* [1954] Crim. L.R. 385).

In conclusion, something should be said on the success or failure of corrective training and preventive detention under the Criminal Justice Act, 1948. The latest Report of the Commissioners of Prisons is for the year 1953 (H.M. Stationery Office, Cmd. 9259). As regards preventive detention too little time has elapsed for any reliable data to be assembled. Corrective training is likewise in its early stages and no prognosis is possible. The Reports of the Commissioners of Prisons are not very encouraging; but then these are early days to make an assessment and in 1949 and 1950 the courts sentenced a large number to corrective training, whereas in later years a more careful selection has been made, as is clear from the figures of offenders so sentenced during the years 1949 (from April) to 1952.

Provocation and the Reasonable Man—Another View

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Professor Glanville Williams, in his article published in the October issue of the *Review*, accepts with equanimity the theory that our criminal law now recognises legal categories of provocation. According to his interpretation of the recent cases "the class of provocative acts is fixed by law" [1954] Crim.L.R. 743. If this assessment is correct, we appear to be faced with the position wherein the right of the jury to determine the issue of provocation as a question of fact, established in the nineteenth century, is gradually being supplanted and the old principle restored whereby the question of provocation is decided by the judge as a matter of law. In my opinion this change of principle is to be regretted and should be resisted before it becomes so firmly entrenched as to baulk the initiation of legislative reform.

Factors contributing towards the objective standard in provocation

Underlying the introduction and subsequent retention of the "reasonable man" test, and particularly the recent restrictions on the scope of provocation, have been several contributory factors. It is, I think, important to bear these factors constantly in mind when considering the merits of the present law. Foremost, is the realisation of the enormity of the crime of murder or, rather, the gravity of the penalty exacted by law. As Viscount Simon expressed the position in *Holmes* v. *D. P. P.* [1946] A.C. 588, 601 ". . . the reason why the problem of drawing the line between murder and manslaughter, where there has been provocation, is so difficult and so important, is because the sentence for murder is fixed and automatic. In the case of lesser crimes, provocation does not alter the nature of the offence at all: but it is allowed for in the sentence. In the case of felonious homicide, the law has to reconcile respect for the sanctity of human life with recognition of the effect of provocation on human frailty."

Secondly, there is the desire to give effect to the dictates of public policy, exemplified by the decision of the House of Lords in *Holmes* excluding altogether confessions of adultery from the doctrine of provocation. Was not this decision directly attributable to conditions at the time, when re-emphasis on the sanctity of human life was thought necessary in the face of repeated instances of emotional disturbance caused to soldiers returning from the war? Take again the substantive rule that discovery by one spouse of another in the act of adultery is deemed sufficient provocation in law—*Maddy* (1671) 1 Vent. 158. This rule, it has been decided, is applicable only in cases of persons lawfully married, thus excluding infidelity by engaged couples or persons cohabiting together. This arbitrary restriction of the principle is presumably based upon the need to uphold the sanctity of marriage vows, but it shows scant regard for the frailty of human nature.

Thirdly, there is the attempt to relate provocation to the evolution of society, the view being held that "as society advances, it ought to call for a higher measure of self-control in all cases" [1946] A.C. at p. 601. Upon this ground, it was decided in *Holmes* v. *D. P. P.* that "in no case could words alone, save in circumstances of a most extreme and exceptional character" (*ibid.* p. 600) reduce the crime to one of manslaughter. The House of Lords having thus spoken it seems that, with our rigid system of *stare decisis*, if any future developments in social behaviour are to be reflected in the law of manslaughter legislation will be required. Moreover, after the decisions in *McCarthy* [1954] Crim.L.R. 549 and *Bedder* [1954] Crim.L.R. 721, it appears that mental aberrations caused through drunkenness, and physical peculiarities such as impotence, are irrelevant in considering the effect of the provocation on the reasonable man.

Authenticity of the judicial portrait of the reasonable man

The net effect of these various considerations is that the judges have gone a considerable way towards establishing—so far as the law of provocation is concerned—a standard portrayal of the make-up and reactions of the reasonable man. They say he is not impotent and he is not normally drunk. He does not lose his self-control on hearing a mere confession of adultery, but he becomes unbalanced at the sight of adultery provided, of course, that he is married to the adulteress. Furthermore, he remains in control of his emotions notwithstanding the vilest form of oral provocation, and, finally, even if he loses control he is expected to resort to no more than reasonable measures of retaliation. The important consequence of this judicial diagnosis is that unless the accused person measures up to these appropriate standards then the criminal law, as it stands, provides no alleviation from the death penalty. Professor Glanville Williams appears to accept this judicial portrait of the reasonable man as undeserving of any adverse comment, but its authenticity seems to have been doubted by the Royal Commission on Capital Punishment. Whilst recommending that provocation should continue to be judged according to the reactions of the reasonable man, the Commission advocates the extension of the doctrine to include (1) confessions of adultery as well as the sight of adultery, (2) confessions of misconduct by parties other than those lawfully married and (3) insulting or other provoking words (Cmd. 8932, paras. 150, 152). The difference of attitude manifested by these proposals is a crucial one. According to the judges, such circumstances are extraneous to the question of guilt or responsibility and, where apparent, the trial judge must withdraw from the jury the possibility of returning a verdict of manslaughter. According to the Royal Commission, on the other hand, such circumstances should clearly be relevant to the issue of guilt. The Commission does not suggest that in such circumstances the jury *must* return a verdict of manslaughter, but that they *may* do so provided they are satisfied that as a result of the provocation offered the accused was so subject to loss of self-control as to kill the deceased. In other words, the judges favour withdrawing, in certain circumstances, the question of provocation from the jury as a matter of law, whereas the Royal Commission favours leaving the issue of provocation entirely to the jury as a question of fact to be decided on the merits of each individual case.

Extenuating circumstances and the prerogative of mercy

It may, of course, be argued that even where the nature or the degree of the provocation is such as to fall outside the legal requirements, it is highly probable that the prerogative of mercy will be exercised thus preventing the death penalty from being exacted. The all-pervading influence of capital punishment for murder is again made manifest. According to the evidence placed before the Royal Commission (para. 39) such cases are generally regarded as constituting strongly mitigating circumstances, and would exert a considerable influence on the Home Secretary's decision whether or not to recommend commutation. But why should it be necessary for justice to be done at the hands of the executive rather than by due process of law? Mr. Justice Devlin in his recent article "Criminal Responsibility and Punishment" [1954] Crim.L.R. 661, 665, pointed in no uncertain terms to the evils inherent in, what he described as, "the extra-judicial tribunal in Whitehall settling matters of life and death." As the learned judge rightly states, "the prerogative of mercy is now perforce being used in circumstances for which it was never designed, not for the exercise of mercy but for the determination of justice." Let us, however, not delude ourselves as to the causes of this pernicious system. The fault does not lie with the Executive. Principally responsible, of course, is the rigid character of the sentence in cases of murder. But, it is suggested, a large share of the responsibility lies with the judges in severely curtailing the occasions, where provocation is involved, in which a jury may return an alternative verdict of manslaughter.

If another and more far-reaching proposal of the Royal Commission is adopted, the jury will be empowered to consider in each case of apparent murder whether there are any extenuating circumstances which should preclude the death sentence being passed (para. 595). Among such extenuating circumstances, presumably, we would expect to find killing in consequence of a confession of adultery or a confession of infidelity by one of an engaged or unmarried couple, or provocation caused by insulting words. So that in effect the same result would be achieved as if a verdict of manslaughter had been returned, but by a devious route. Whatever the merits of this proposal, and it deserves closer study than that hitherto accorded to it, it does not commend itself to the present writer as the best or proper means of overcoming the position under the present law.

So far I have dwelt on the general arguments against withdrawing the question of provocation from the jury. To substantiate these arguments requires an examination of the "legal categories of provocation," and to this task we now proceed.

Sight of adultery

Ever since the seventeenth century it has been recognised that where a husband detects a man in the very act of adultery with his wife and kills one or other of the parties there and then, that is sufficient provocation to justify a verdict of manslaughter: *R.* v. *Maddy* (1671) 1 Vent. 158. This rule was confirmed in *Holmes* v. *D. P. P.* where the view was expressed by Viscount Simon that the same rule would apply in the converse case of a wife killing her husband or his paramour. According to Professor Glanville Williams [1954] Crim.L.R. 742 this rule "is not qualified by a further rule to the effect that the discovery is provocation only if an ordinary man who finds himself in the particular circumstances would kill." To accept this submission, it is respectfully suggested, might well lead to most unjust, if not absurd, consequences. Instead, the contrary proposition is here put forward, *viz.*, that the rule as to " sight of adultery " is not absolute in character and should be judged by the same standards as pertain to any other instances of provocation.

If Professor Williams's view is correct, it follows that the mitigation afforded to an unsuspicious individual who suddenly finds his spouse in the act of adultery is also to be extended to the husband who consistently connives at his wife's adultery and then takes deliberate steps to discover her *flagrante delicto* and kill her. Furthermore, it may well be asked, where is the justice of treating such cases as manslaughter and refusing any palliation to the man who, unmarried or already married, unexpectedly finds the woman, with whom he has been living over a long period in complete fidelity, in the act of sexual intercourse with another man? Few will be prepared to ignore the necessity of maintaining the sanctity of marriage as the foundation of society, but is there sufficient justification for fixing the boundaries between murder and manslaughter on the basis of an arbitrary rule of law which, on the one hand, confines itself to married couples and, on the other, takes no account of the reaction of the ordinary person in similar circumstances?

Confession of adultery

Since the decision in *Holmes*, it is clear that legislation will be required if the former position is to be restored whereby a confession of adultery may be regarded as adequate provocation. This, it will be recalled, is one of the proposals made by the Royal Commission and it derives support from two recent Scots cases, *H.M. Advocate* v. *Hill* [1941] S.C.(J.) 59 and *H.M. Advocate* v. *Delaney* [1945] S.C.(J.) 138, in which the jury were directed that a confession of adultery is capable of being sufficient provocation to reduce murder to culpable homicide. Is the answer to this conflict between English and Scots law to be found in the judicial conception of the temperament of a reasonable Scotsman and Englishman respectively? At any rate, it seems unlikely that the Scottish courts will follow the strong line taken by the House of Lords in withdrawing the issue of provocation from the jury in cases of killing following a confession of adultery. As a decision based upon public policy this ruling may command a certain measure of support, but it is questionable whether it even represents the view of the majority of public opinion as to what the law should be. As a rule of law, however, laying down in advance for the convenience of judges the presumed reaction of a reasonable person, it is open to criticism. Can it, in all conscience, be asserted with complete surety that a jury, in any case which came before them, would reject the contention that a confession of adultery might cause the ordinary civilised Englishman to lose complete control of his normally pacific temperament? If not, it would appear that a case is made out for introducing legislation to give effect to the recommendations of the Royal Commission, *viz.* (1) that the adequacy of a confession of adultery as provocation should be left to the jury as a question of fact, and (2) that the same considerations should apply where the parties are not husband and wife.

Mode and degree of retaliation

The increasing reference in recent cases to the requirement that the mode and degree of retaliation must bear a reasonable relationship to the provocation is yet another step by the courts to tie the hands of juries when considering the defence of provocation. Professor Glanville Williams has shown that not only may the rule be used in directing juries but also it may be used to withdraw the issue of provocation altogether from the jury : [1954] Crim.L.R. 748. The latter possibility, though not as yet general, would merely be the logical extension of the theory that there are now legal categories of provocation. The argument would run like this—since the law now fixes the class of provocative acts so the law must decide in advance the permissible kind and degree of retaliation to such provocative acts. Professor Williams is content to criticise the rule on the ground of the difficulty in explaining it to juries. But surely there exists a more fundamental criticism and this lies in the attempt of the judges to delineate the recognised modes of retaliation thereby preventing the jury from considering the real issue, *viz.*, whether the circumstances of the case before them of a killing in heat of blood deserves the supreme penalty. Moreover, if, as Professor Glanville Williams suggests, the present state of the law of provocation requires an equality between the injury and the vengeance, where is the dividing line to be drawn between self-defence with its complete exemption from responsibility and provocation with its basis of diminished responsibility? Professor Williams summarises the position thus (*ibid.*, p. 749) : "If the accused intended to kill, this is palliated only if he was himself the victim of a murderous attack (apart from the case of adultery); if he intended to do great bodily harm, he must have been the victim of a similar intent." It is submitted that to consider such cases in terms of palliation is inaccurate—such circumstances invoke rather the principle of self-defence in which the killing is justified. Another difficulty which arises in stating the retaliation doctrine as a fixed rule of law is to discover what the law permits in cases of sight of adultery. What is to be adjudged reasonable in the light of the ensuing death of the victim—a single blow or repeated blows, the fist or a lethal weapon?

Mental or physical peculiarities

That the peculiar sensitivity of the accused—be it drunkenness, mental deficiency or sexual impotency—provides no special privilege in the application of the law of provocation is now established. Such is the almost inevitable consequence of judging cases of provocation by an objective standard. But it is interesting to conjecture whether the law would have developed along the same lines if the courts had been concerned, instead, with cases in which the physical peculiarity of the accused had been, say, the absence of a limb, or blindness or a hunchback. Supposing an unfortunate person suffering from such a deformity had been subjected to cruel and continuous taunts until he finally retaliated with fatal results, can it be said with certainty that the courts would have directed the jury to disregard the accused person's physical abnormality? In any case, these hypothetical examples point to the difficulties which are likely to be encountered in applying the test of the reasonable man. As to the present law, cases of drunkenness, such as *McCarthy* [1954] Crim.L.R. 549, may be explained on the ground that drunkenness is a condition which is voluntarily induced and, therefore, should be disregarded in judging provocation objectively. Again, in cases of sexual impotence, like *Bedder* [1954] Crim.L.R. 721, can it be that no importance was attached to the surrounding aura of immorality, so foreign to the judicial portrait of the reasonable man? And in cases of mental deficiency, like *Lesbini* [1914] 3 K.B. 1116; 11 Cr.App.R. 7, are there not discernible traces of the same stubborn attitude adopted by the judges towards irresistible impulse, which tends to be judged not subjectively but by the standard of the reasonable man who is expected to be capable of controlling such mental disturbances?

Conclusion

So long as the entire range of cases of murder carries with it the inflexible penalty of death, it is rash to deny the expediency of judging the defence of provocation by an objective standard. Difficult cases are bound to arise in which the inherent weakness of such a test is exposed. Should the day ever come when capital punishment is abolished, and the maximum punishment for murder is reduced to life imprisonment and for manslaughter to, say, ten years' imprisonment, the path will be open for giving effect to the frailties of individual human behaviour by substituting a subjective for the present objective standard. But in the meantime there is a need for calling a halt to the increasing practice of withdrawing the issue of provocation from the jury by means of predetermined categories of provocative and retaliatory acts.

Aspects of Forensic Science

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Hairs

Human hair

The examination of human and animal hairs provides a great deal of interesting work in a wide variety of cases. Biologically speaking, it is true that man is only another animal, but in the field of forensic science it is more convenient to divide the subject of hairs into the study of human hairs and that of animal hairs other than human. Naturally these are not water-tight compartments since the same type of examinations are necessary in both, and the same type of case may provide investigation into both human and animal hair.

Ever since the early days of forensic science, the subject of human hairs has provoked a great amount of interest and controversy. It is perhaps true to say that more rubbish has been written on this than on any other branch of forensic science. How often has the scientific investigator of fiction only to examine a hair under a hand lens to be able to say without hesitation that it has come from the head of an elderly male pastry-cook of Oriental origin living in the Outer Hebrides, or make some equally far-fetched claim. Admittedly this is an exaggeration, but the fictional investigator is often endowed with some very remarkable powers by his creator.

It would undoubtedly be possible in most cases to identify the hair as coming from the head; the presence of particles of flour on the surface of the hair would, it is true, give an indication of the occupation of the person from whom it had come; the examination of the hair under the microscope, particularly in cross-section, could help in establishing certain racial characteristics but the age and sex of the person from whom the hair had come would remain in doubt and his abode shrouded in mystery.

It is true that in days not so long gone by, a long hair could almost certainly have been identified as coming from the head of a female and a short, cut hair from the head of a male, but in these days of tonsorial peculiarities the reverse might well be true. In general, male head hair is coarser than female head hair, but this may not be true in particular. The greying of the hair is a fairly reliable means of estimating the age of the person from whom it has come, but that method *can* result in an error of anything up to forty years or more. The hair of some people, as is well known, turns grey in their twenties, others retain their natural colour into their sixties or later. Again, one can only work from the generalisation that grey hair becomes more common from the later thirties onwards.

The age of very young children can, however, be estimated with quite considerable accuracy. In April, 1950, two female children, one aged four years and the other a baby of nine months, were indecently assaulted in their beds in the living quarters of a hospital near Maghull. The clothing of a suspect was examined at the laboratory. One of the significant things found on the clothing was a human head hair which could be identified as coming from the head of a child not more than twelve months old. This was compared with hairs from the baby's head and found to show complete agreement with them. (*R.* v. *Power*, Liverpool Assizes, 6/6/50.)

It must be understood that it is never possible to state categorically that any one sample of hair must have come from a given person's head. The most that can be said of the hairs is that they agree with the sample examined in every detail and that they differ from any other hairs which may have been examined in connection with the same case. Nevertheless, when the sample is large enough, the probability of identity increases, since the number of points available for examination and comparison is also greatly increased. In a case of breaking into a naval establishment shortly after the end of the war, the offender disturbed one of the sleepers. In the struggle that followed a handful of hair was torn from the intruder's head before he succeeded in making his escape. The naval authorities took samples of hair from the head of every one of the naval personnel on the camp whose hair was, approximately, of the same colour as that of the intruder. All these samples, about fifty in all, were examined at the laboratory and compared with the original sample. Despite the fact that all the other samples were chosen because of their resemblance to this original sample, the examination made it clear that there was no complete agreement between any of them and this original sample. This removed suspicion from the naval personnel but it was not possible, unfortunately, to obtain hair samples from the large number of civilians who either lived on, or had access to, the camp.

It is generally possible from the microscopic examination of hairs to tell whether there has been any alteration of the natural state of the hair, whether by dyeing, bleaching or waving. The presence in a sample of hair of some artificial alteration to the natural state may provide a very useful link in some cases.

At about 11 p.m. on a night in January, 1942, a jeweller's window in Preston was smashed and two men were seen to drive away after removing a quantity of jewellery from the window. In making his escape one of the men was seen to drop a beret. The beret was examined at the laboratory. Inside it were found several human head hairs which, on microscopical examination, were seen to be dyed brown, their original colour, visible at the roots, being much lighter. Some days later, a sample of hair from the head of a suspect was received at the laboratory for comparison with that found in the beret. The hairs from the two sources were found to show complete microscopical agreement in both their dyed and their undyed parts. (*R.* v. *Thomas*, Manchester Assizes, 27/4/42.)

In the early summer of 1950, the woman owner of a Belfast second-hand shop was violently attacked and robbed while at her shop. The injured woman was able to describe her assailant as a fair-haired young man, adding that, apart from his fair hair, he closely resembled a man living in the neighbourhood whose hair was, however, quite a dark colour. This man was missing from the district and when he was later arrested was found to have fair hair. Some of the hair was examined and found to be bleached, the original colour of the hair being dark. These findings greatly strengthened the identification made by the injured woman. (*R.* v. *Bell*, Belfast City Commission, 22/1/51.)

The appearance of the hair may be altered by physical treatment other than waving. On a night in December, 1950, the police at Bolton were informed that a man had received serious injuries as a result of a domestic quarrel. When the police arrived at his home, they found the man dead from a stab wound in the chest and his wife sitting near by in a very distressed condition. She was later charged with the murder of her husband. Her story was that, during a quarrel the dead man had grabbed her by her hair, pulling her about by it, and meanwhile striking her with his fist. She had succeeded in breaking away from him and had seized a knife from the table with which to defend herself, when her husband ran on to the knife in a further attempt to strike her. A large tuft of hair was found on the left trouser leg of the dead man. This was examined at the laboratory and compared with hair from the accused woman's head. The two samples were in agreement in all but one of their characteristics: the diameter of the hairs from the scene was, in every case, markedly less than the diameter of the hair from the head of the accused. Some hairs from the accused's head were then submitted to a stretching process, after which it was found that the agreement between them and those from the scene was complete. This was some confirmation of the accused's story that she had been pulled about by her hair and she was ultimately convicted of manslaughter. (*R.* v. *Kay*, Manchester Assizes, 12/3/51.)

Other additional features on the hair may occasionally strengthen the evidence. In a case of attempted rape at Preston in the summer of 1943, a bunch of head hairs was found caught in the right sleeve buttons of the suspect's jacket. These hairs showed complete agreement with hairs taken from the girl's head. The girl was lousy and her hair bore many "nits," the eggs of the head louse. Nits were also present on the hairs found on the suspect's jacket. (*R.* v. *Fisher*, Lancaster Assizes, 18/10/43.)

In indecency cases the examination of hairs is often of great importance, and frequently hairs from several parts of the body have to be examined and compared. Pubic hairs or head hairs may be transferred from the attacker to the attacked and vice versa in cases of rape or indecent assault. In cases of indecency between males, anal hairs may be found on or about the private parts or front clothing of one of the men concerned. The examination of pubic hair, as in the Christie case, may throw light on some unusual features of a case.

The examination of clothing for hairs follows almost as a matter of course in cases of assault, indecent or otherwise. In many cases of wounding where an instrument has been used, hairs from the injured person may find their way on to the instrument. Hairs from a person injured in a road accident may be found on the vehicle concerned. These are cases in which hair examination may, quite obviously, be of value. There are however other types of cases in which the evidence of hairs may prove useful. In housebreaking cases, hairs may be left at the scene or be left on some article of clothing accidentally or intentionally left behind by the offender.

In October, 1943, a house in Stalybridge was entered and a quantity of material stolen. A comb and a soldier's forage cap were left at the scene by the offender. Several human head hairs were found in the cap and on the comb. All the hairs found could have come from the same head. Several weeks later a sample of head hair from a suspect was received at the laboratory for comparison with the hair found in the cap and comb. All the hairs were found to show complete microscopical agreement. (*R.* v. *Trower*, Chester Assizes, 23/2/44.)

On occasion hairs from other parts of the body than those already mentioned may play their part in an investigation. In a fatal road accident at Coppull in July, 1950, the vehicle concerned did not stop. Later a vehicle thought to have been involved in the accident was examined. From a nut on the offside of the vehicle a fragment of tissue was removed. On microscopic examination this was found to be skin bearing a number of fine short hairs. These hairs had all been cut close to the root with a sharp instrument and it became clear that the whole was a piece of shaved skin. A comparison was made with a piece of skin taken from an injured part of the dead man's face. The hairs in the skin from the vehicle agreed completely with the hairs in the skin from the deceased. (*R.* v. *Warburton*, Chorley Magistrates' Court, 1/9/50.)

In August, 1943, an attempt was made to break into a shop in Birkenhead. It was clear that the person concerned in the crime had injured himself in breaking a window on the premises, since there was blood on the window and a large pool of blood on the ground near it. A man suspected of the crime was found to have been recently treated at a hospital for a cut hand, five stitches having been inserted. When interviewed, he claimed that he had cut his hand at a window at his home. This window did not, however, appear to have been broken at that time but had the appearance of an old break. A sample of hair from the injured hand was obtained. On the broken window at the shop were found fragments of skin bearing hairs. The hairs on this skin were found to agree completely with the hairs from the hand of the suspect. (*R.* v. *Murphy*, Birkenhead Quarter Sessions, 12/10/43.)

Such evidence as may be supplied by agreement of hairs as illustrated in the foregoing cases is, of course, largely of a corroboratory nature and must generally be considered in conjunction with any other evidence that may be available in the case.

Animal hair

The study of animal hairs also provides a great deal of interesting material. Though the differences between the hairs of animals of the same breed is not as marked as in the case of human head hairs, nevertheless a remarkable degree of individuality may yet be found. In a case of hen-worrying at Stockport in June, 1940, a dog was thought to be responsible. Some hairs were found adhering to a projecting piece of wood where the animal responsible had forced its way into the hen pen. These were sent to the laboratory together with samples of hair from the chicken owner's dog and from a dog belonging to a neighbour of his. From the laboratory examination it was possible to state that the hairs found on the hen pen were dog hairs but there was no agreement between these and the other two samples examined. Later, samples of hair were received from three more dogs and again the laboratory examination was able to exonerate them. It was possible, however, to say that the dog concerned was probably of the same breed as one of these three—a cross-bred Airedale. Towards the end of July, a further dog hair sample was received. This, from a cross-bred Airedale terrier, agreed completely with the hairs from the hen pen. (*Finnegan* v. *Hipkins*, Stockport County Court, 22/9/42.)

The examination of animal hairs may become necessary in a wide variety of cases. That such examinations should be made in cases of bestiality, road accidents involving animals, illegal slaughter or larceny of animals is only to be expected, and frequently hairs do provide quite valuable evidence in such cases. There are, however, many other types of cases in which hair examinations may provide information of the first importance.

In August, 1939, a motor-cycle combination, travelling along a straight part of the Belmont road towards Bolton, came into collision with a car travelling in the opposite direction. The motor-cyclist was killed. The statements of the car driver and the side-car passenger were conflicting, each claiming that the other vehicle was on the wrong side at the time of accident. A piece of mud-guard dirt was found in the roadway, on the motor-cyclist's side of the road, and it was thought that a comparison between it and samples of dirt from under the mudguards of the two vehicles might assist in determining the positions of the two vehicles at the time of the collision. Consequently the samples were examined at the laboratory. As might be expected of the dirt from two vehicles travelling around in the same area, there was very little difference to be seen between them. It was noticed, however, that the soil from the road contained a higher proportion of animal hairs than usual; horse, dog, cow, sheep and pig hairs being present. Only horse and dog hairs, the hairs commonly to be found, were present in the dirt from the motor-cycle, but the dirt from the car showed the same unusual variety of hairs as that from the roadway. This indicated that the car had been on the wrong side at about the moment of impact. The car driver was a cattle dealer and used his car to travel from cattle-market to cattle-market. He was therefore more likely to pick up animal hairs than the average user of the roads. (*R.* v. *Walker*, Bolton County Magistrates' Court, 5/10/39.)

People who come into contact with animals in the course of their work or as a result of keeping pets are likely to get hairs from those animals on their clothing. These hairs may at some time be of use as an aid to an identification. In cases of rape where farm hands have been concerned, cow and horse hairs have been found on the clothing of both persons concerned. Hairs from other animals have also proved useful. In July, 1943, the cashier at a Chester shop was attacked by two men who attempted to steal from the shop. Despite receiving blows on the head from a weapon carried by one of the two men, the cashier struggled and screamed and the two attackers fled leaving the weapon behind. This was found to be a hammer with a sock wrapped round the head. When the sock was examined at the laboratory, a number of dog hairs were found on it. Some time later, hairs removed from the clothing of a suspect and from a house where the suspect was known to be living at the material time, were examined at the laboratory. They were found to be dog hairs which agreed exactly with those found on the sock. (*R.* v. *Mulholland and Rideal*, Chester Assizes, 2/11/43.)

Animal hairs may be of considerable value in proving contact between person and person, or person and place. The hairs may be part of the clothing of one of the persons or be of a particular type which can be connected with a certain place.

A woman was assaulted by a Polish airman at Blackpool in November, 1943. A friend came to her assistance and the airman made off. At an identification parade the following morning, the woman was able to identify her assailant but her friend was unable to do so. The man identified denied that he was responsible for the assault, so the clothing of the two people concerned was examined at the laboratory. On the Pole's outer clothing were found hairs identified as those of opossum. These agreed with hairs from the opossum fur coat worn by the woman when attacked. (*R.* v. *Krause*, Preston Quarter Sessions, 13/1/44.)

In October, 1952, a quantity of stolen metal was found in the house of a man living at St. Helens. The man denied stealing the metal, claiming that he had found it on a waste dump. A sack found at his house was similar to sacks in use at the place from which the metal was stolen. These sacks contained hairs for use in the plastering trade. The sack from the suspect's house was examined at the laboratory together with a sample of the hairs from the other sacks. In the sack was found a number of cow and deer hairs agreeing exactly with the hairs in the sample.

It would be possible to continue quoting cases involving the examination of hairs, but the cases already mentioned give a fair indication of the scope of the investigations that may have to be carried out in this connection. In considering the evidence, it must always be borne in mind that it is no more possible to identify hairs as coming from an individual animal than it is in the case of human hairs and that, therefore, the evidence must be assessed in conjunction with the other evidence available. Quite obviously, the value of the evidence is greatly enhanced if the animal concerned in the case is rare, or if the hair has been altered in some way, either by disease or by intentional interference with the appearance of the hair, so as to give it some unusual feature. Equally obviously, if the hair is that of an animal which is extremely common then the value of the evidence on its own is considerably less. On the other hand, a failure to find a match between two lots of hairs may well prove the innocence of a suspect, as described in the case of hen-worrying. Such findings are not infrequent; there must be quite a number of dogs still walking about who, unwittingly, owe their continued existence to the forensic scientist.

Pride of Tulliallan

The Scottish Police College

Tulliallan Castle in the Kingdom of Fife was built and its spacious grounds laid out by Admiral Keith in 1800–1823, when Tulliallan was in Perthshire, with the prize money he earned in the Napoleonic wars. The Castle has had many occupants including General Sikorski and the expatriate Polish Government and now it is the Scottish Police College Headquarters and Senior Division and houses the Commandant, the Directing staff and thirty-two police students of the rank of sergeant during a six months' course of higher training. The Junior Division, which deals with the training of probationary constables, is due to move to Tulliallan when the necessary buildings have been provided.

One believed before arriving in Scotland that the English common law, if not Coke's " perfection of reason," provided an adequate system of criminal justice but one found the matter soon put into perspective at Tulliallan. The Scottish common law, which has its roots in Roman law, has a flexibility and an adaptability which the English common law lost when the legislature began to incorporate so much of the criminal law into statute. The Scots have no Larceny Act, no Malicious Damage Act, no Offences against the Person Act and do not need them. The Scottish common law is adequate to punish acts of a criminal nature without the aid of such statutes. For example, section 28 of the Road Traffic Act, 1930, was passed because "joy-riding" did not constitute the offence of larceny of motor-cars in England. But the Scottish common law had a perfectly adequate remedy for the offence and section 28 is supererogatory north of the border.

The charge of causing a public mischief further illustrates the difference. The decision in *R.* v. *Manley* [1933] 1 K.B. 529; 24 Cr.App.R. 25, that making false statements to the police and thereby causing them to waste their time was conduct causing or tending to cause a public mischief and a misdemeanour at common law raised a storm of protest and in *R.* v. *Newland* [1954] Crim.L.R. 51, the Court of Criminal Appeal denied that the courts had power to declare new offences: that being the function of the legislature. But in *Gray* v. *Morrison*, 1954 S.L.T. 71, the Scottish courts took a charge of this character in their stride and the only matters considered were the sentence and the wording of the charge.

Scottish police officers are critical of the English practice whereby prosecutions are conducted by the police. The grounds of criticism are (a) the danger of bias in the conduct of a prosecution; and (b) the waste of time involved in having police witnesses available in court in undefended proceedings. The Scottish system is for the police officer to make a written report of all incidents. These reports go to the appropriate public prosecutors who consider whether they disclose facts on which a prosecution should be instituted, and who conduct the resulting prosecution, if any. If a plea of guilty is offered, the Procurator-Fiscal's statement of the case in court is sufficient for a conviction and no police officer attends to give evidence in support thereof. The only private prosecution in Scotland now is in respect of certain poaching offences. (When one protested that they were sufficiently rare in England one had not the reference ([1954] Crim.L.R. 39) available to support one.)

The thirty-two students of the College do a great deal of criminal law as part of their course and are compelled to look up their own authorities in a rapidly expanding library.

They have compiled in the course of so doing a very detailed index of sources—statute law, cases and textbooks—under the various headings under which their research has been directed. As this index is worked on by each succeeding class it is revised and improved and is now a compilation of considerable utility and is in many respects unique. A thing that struck one was that every student used a typewriter with greater or less proficiency, and one was given to understand that a Scottish police officer without a typewriter was not a complete entity.

The thirty-two students are divided into two syndicates of sixteen each and these are again sub-divided into groups of eight each. The students are nominated to the College by their Chief Constables and the nominations are approved by the police authorities. The students are representative of police forces covering the whole of Scotland.

The dominant impression which one received during the course of a regrettably short visit was the pride which the College has in the work it is doing, in the economy and efficiency which are everywhere apparent, in the splendid old building in which it is housed and in its beautiful grounds—in short the Pride of Tulliallan.

J. B.

Self-Incrimination in Evidence

By J. F. Josling, *Solicitor*

The privilege of silence

In a criminal prosecution widely reported earlier this year there figured among the Crown's witnesses two persons who, as was clear from counsel's opening address, were expected to give evidence of a kind which would implicate them in the offences charged. In these circumstances it is usual for the court to warn the witness, after he has been sworn but before he comes to the material part of his evidence, that he is under no compulsion to answer any question the answer to which would incriminate him. On this occasion, however, in regard to each witness the prosecution successfully submitted to the court that no such warning need be given. The witness, counsel said, was in no danger, counsel being authorised on behalf of the Director of Public Prosecutions and the Service authorities (both witnesses were servicemen) to state that no proceedings would ever be taken against them in respect of the matters in question. This was a very practical illustration of the scope of the privilege conferred by the law on a witness of refusing to answer incriminating questions. " To entitle a party called as a witness to the privilege of silence," said Cockburn C.J. in *R.* v. *Boyes* (1861) 1 B. & S. 311 at pp. 329–330, " the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer."

History of the privilege

The privilege was first established nearly 300 years ago, and is not in any way special to witnesses in criminal cases. Its exact incidents were, however, not settled until Victorian times. Both statute and case law have contributed to its formulation. Thus we find the Witnesses Act of 1806 reciting that doubts had arisen whether a witness could by law refuse to answer a question relevant to the matter in issue, the answering of which had no tendency to accuse himself or to expose him to any penalty or forfeiture, but might establish that he owed a debt or was otherwise subject to civil suit. The Act declared that he could not refuse to answer solely on the ground of liability to civil proceedings. But it is to be observed that in the preamble just quoted, as in the operative part of the statute, the contrast is not strictly one between liability to all civil proceedings and purely criminal liability; the word " forfeiture," though coupled with " penalty " has an independent significance, as was illustrated in *Pye* v. *Butterfield* (1864) 5 B. & S. 829. That was an action of ejectment, and the defendant objected to answer certain interrogatories on the ground that his reply would tend to show that he had broken a covenant in his lease against underletting and so had incurred a forfeiture of the lease. Interrogatories, which are on a par with *viva voce* evidence for the present purpose, as a form of discovery are derived from equitable procedures. Crompton J. recalled that the courts of equity were averse from extending the power of discovery to cases of forfeiture, and the court was unanimous in upholding the objection. " No man shall be compelled to give an answer which shall have an effect leading to the forfeiture of his estate."

The next statute to refer to the matter was the Evidence Act, 1851, section 3 of which preserves in general terms the common law protection against self-incrimination from being overwhelmed in the portentous reform which the Act introduced—that of rendering the parties to a civil suit competent and compellable to give evidence *both for and against themselves*. Within a few years the famous litigation over the libel alleged to have been written by Cardinal Wiseman in a French catholic newspaper raised the issue of privilege in the new setting, for the plaintiff Boyle was concerned to prove that the cardinal, who was the defendant, was indeed the author of the libel. He subpoenaed the defendant and called him (*Boyle* v. *Wiseman* (1855) 10 Ex. 647). The trial judge, somewhat put out, it appears, at finding it impossible to obtain an advance indication of the questions which the plaintiff's counsel proposed to ask, upheld an objection by the defendant's counsel that the cardinal ought not even to be sworn, on the ground that any question which was likely to be put must lead to an incriminating answer. The full court ordered a new trial. In the course of the discussion the judges pointed out (1) that the 1851 Act said that the parties were *compellable* to give evidence; (2) that the cardinal could at least have been examined with reference to damages; (3) that he might have been merely asked his identity, whereupon it was not inconceivable that someone else could testify that he had seen that particular witness write the libel; and (4) that the cardinal might have waived his privilege.

Nature of the privilege

Of these interjections (3) is perhaps far-fetched, and in any case it seems from a dictum of Alderson B. in *Osborn* v. *The London Dock Co.* (1855) 10 Ex. 698, 701, that the fear of providing an apparently insignificant link in a chain of evidence is good ground for refusing to answer. But (4) gives the whole clue to the decision of the court. It is the witness's own privilege. He is the person to claim it, and it is not a matter for argument by counsel (*cf. Thomas* v. *Newton* (1827) Moo. & M. 48n.). The proper course is for the witness first to be sworn, and then to decline to answer particular questions if he insists on his privilege. The court will of course judge whether the insistence is justified.

In other words the right of a witness as such (though in a civil case he may also be a party) is to decline to *answer*; not, as in the case of a person charged with an offence and giving evidence under section 1 of the Criminal Evidence Act, 1898, a right *not to be asked* certain questions save in exceptional circumstances (proviso (*f*)). The forbidden questions are those relating to *other* offences; an accused person need not give evidence, but if he does he naturally has no privilege as to the offence charged (proviso (*e*)).

Loss of the privilege

A witness, therefore, other than the accused, may be asked any relevant question, and must then as a matter of strict law take his own objection or decide to waive his privilege. He owes it to himself to take, subject to the court's direction, an uncompromising line in the matter, for once having answered one or two questions on an incriminating topic he will not, according to *East* v. *Chapman* (1827) Moo. & M. 46, be allowed to call a halt. In *R.* v. *Coote* (1873) L.R. 4 P.C. 599 the Privy Council treated the maxim *ignorantia juris non excusat* as applying so as to make it irrelevant that a witness may not have known of his right to refuse an answer. If he in fact answers without objection, or after an objection which the court properly overrules, the evidence is not only admissible at the time, but may also be used against the witness in subsequent proceedings. On the other hand, if the witness is directed to answer notwithstanding his objection, and a higher court holds the objection to have been a sound one which should have been sustained, the relevant answers become inadmissible (*R.* v. *Garbett* (1847) 1 Den.C.C. 236).

The recent case to which we referred at the outset of this article demonstrates that a witness who is no longer in practical jeopardy of prosecution has no privilege. The classic example in the books is *R.* v. *Boyes* (*supra*), which arose out of a parliamentary election. It was alleged against the defendant that he had bribed certain voters, and the latter were called as witnesses for the Crown. The first voter was asked whether he knew the defendant. He declined to answer. Thereupon the Solicitor-General, prosecuting, produced and handed to him a pardon under the Great Seal, a document in most comprehensive terms which are set out in a note to the report. The witness still declined to answer, but was eventually directed to do so by the judge. The full court held that the judge was justified in this direction; the pardon effectively removed the witness from any real or appreciable peril on the offence notwithstanding that there remained the technical but practically remote possibility of an impeachment by the House of Commons, against which no royal pardon is pleadable.

Boyes' case is also of interest as containing one of the few references in the books to the warning customarily given from the bench to an implicated witness. For when the voter entered the box Martin B. "told him that, by the law of England, no man was bound to state anything which subjected him to a criminal prosecution; and, if he was asked any question with respect to the alleged bribery, he might say whether he would or would not answer it, at his pleasure." Though there may be no obligation thus to inform a layman of his rights, it is certainly fair that some such caution should be given in any case where the court knows in advance of the danger to a witness. No doubt the practice of giving it has for so long been general among courts of all degrees that neither text writers nor reporters deem it worthy of comment or record.

A Day in a Police Court

By A. E. JONES
Magistrates' Clerk

The series of which this is the twelfth and last instalment presents a typical day's work in a stipendiary magistrate's court, but no actual court or person is depicted.

The End of the Day

The magistrate had finished exercising his criminal jurisdiction for the day. The prison van which had been waiting in the yard "just in case" could take away its cargo of remanded and sentenced prisoners, each precisely labelled according to law in an accompanying commitment warrant. Sergeant Chumbleton, the gaoler, had only to make out notices of fine for defendants who had not paid forthwith, and then he could begin on the next day's work by entering up tomorrow's remands. In the General Office they had stopped taking and paying out money under court orders and were balancing the books with the cash in hand.

Bastardy

For Mr. Sutterthwick the day's task was not yet completed. Sergeant Quing had still a few more numbers and names to call from his list. Jean Macarthur and George Lalong were Summons No. 49. From the waiting-hall there came a small pale-faced woman of about thirty-five with delicate features and Scottish red hair. From the seat at the back of the court stepped forward a stockily built, brown-eyed, brown-skinned Malayan. From counsel's bench rose a tall, slim young barrister—Robert Forbes-Gale, not long called. "I appear for the complainant, sir," he said. He had been briefed for a nominal fee paid by a charitable organisation which existed to help women get their legal due in matters of maintenance. Miss Garrafrey had realised the complainant's need of technical assistance when she heard her story, and it was through the probation officer that Jean Macarthur had found her way to the society.

"Do you admit being the father of this woman's child?" said Frell, the clerk, to the defendant.

"No sir. It's a lie," replied the swarthy one in soft, musical tones and would have added much more only Frell interrupted with "All right. You'll have a chance to say all that later. Listen to what she says now. It's her turn first."

"I don't think I need open the case, sir," said Mr. Forbes-Gale. "The facts will appear quite plainly from the complainant's evidence." At this moment the baby in Jean Macarthur's arms woke up and began to cry. Policewoman Labbiss was hurriedly sent for to remove the disturbance out of earshot of the courtroom.

"Before the baby goes," said counsel, "I would ask you, sir, to notice its colour and general appearance." The reason for the request was obvious. Mr. Sutterthwick glanced at the squalling infant with its brown eyes and brown little monkey face and remembered that the House of Lords had pronounced alleged family likenesses to be only "loose and fanciful" evidence of paternity. Miss Macarthur parted reluctantly with the burden in her arms and at first was equally reluctant to tell her story in the necessary detail. Her counsel gradually reassured her by his handling of a delicate subject and eventually it was impressed on her, by the calm, businesslike way in which the socially unmentionable was legally discussed, that she must speak as freely to the court as she would have done to her doctor. Frell's note with its contractions and omissions was a sort of dehydrated version of her evidence. Reconstituted it read :—

"I'm single. I gave birth to a male child on November 25th last. Defendant is the father. I've known him about two years, but not well. It was his wife I knew better. They lived in the same house as I did, but defendant is a seaman and was often away. I had one room on the ground floor where I lived with my little girl. I have a child by another man. She is five years old. I have had nothing to do with her father since I went to my present address two years ago. He had left me just before that. He is an Englishman, not a coloured man. The defendant and his wife and their little boy of three occupied the rest of the ground floor. In February last, his wife was expecting a baby. On February 12 defendant knocked at my door at about 1.30 a.m. and woke me up. He told me he had to take his wife to hospital immediately and he asked would I mind looking after his little boy until he got back? The child was awake and crying. My little girl had not waked up. I dressed and went across to their rooms and I stayed there with the child until defendant came back. He made a cup of tea then, and I asked how his wife was. We stayed talking for a bit and then he said he liked me very much. I told him not to talk like that with his wife as she was. He said she was really too young to love properly. He said that other men had told him it was a different experience with an older woman like myself. I told him not to talk silly. He said I could stay the night there. I said I must go back on account of my little girl. I was a little afraid of him. I returned to my room and nothing happened between us that night. I saw him again frequently during the next few days. I helped him with his little boy. I had promised his wife I would. He kept telling me that I was very beautiful and that he loved me very much. I suppose I began to fall for him and, well, I am not narrow-minded. I first had connection with him three nights after his wife was taken to hospital. It took place in my room. I had connection with him several times after that. The last occasion was on February 28. His wife came back from hospital with her baby next day. I never had anything to do with defendant after that. I did not see him alone, only with his wife. I first knew I was going to have a baby about six weeks later. I told defendant about it. I stopped him as he was leaving the house one day. He gave me ten shillings to buy some pills and told me everything would be all right. I bought the pills he told me but I did not take them. I did not speak to defendant about the matter again before the baby was born. He went away to sea soon after he gave me the ten shillings.

By the magistrate. I had opportunities to tax him with it when he returned but I did not like to. I was still friendly with his wife and I felt ashamed.

Further examined. When the baby was born and I saw its colour I realised his wife must know. Also I wanted some money for the baby. I had used all my savings and had had to give up my job. On my return from hospital I went to see defendant with my baby. His wife was present. I went with Mrs. Gartman from upstairs. I took her as a witness. I asked him what he was going to do about it. He said it was nothing to do with him. I said he was the father of the child. He denied it. I mentioned about the money he gave me to get rid of it. He admitted he did give ten shillings, but he said that was just a present for looking after his little boy while his wife was away. He and his wife became very insulting and threatening and they more or less turned me out. He said he would have the police on me for blackmail. I have not seen him to speak to since.

By the magistrate. I never had any letter from him.

Further examined. I work in a laundry and earn £4 15s. 0d. a week. I have to pay 1s. 6d. a day for the baby to be minded while I am at work. My little girl has her dinners at school. My rent is 12s. 6d. a week.

Cross-examined. Defendant did have connection with me. He did tell me he was in love with me. I did tell him I was going to have a baby when he gave me the ten shillings. I do not know any other coloured men. I did not tell defendant I had been friendly with an Arab fellow named Ahmed. There was a stoker of that name at a laundry I once worked at but I was not friendly with him. It is three years since I worked at that place and I have not seen him since. I never went out with him. All that I have said is the truth."

The clerk's note of the cross-examination gave little indication of its real nature. For George Lalong, like most unlearned defendants, had turned the opportunity the law gave to test the veracity of the witness into an occasion for making long statements and denials without considering it necessary to hear what the complainant had to say about them. What Frell had taken down had mainly been extracted by himself on questions embodying the gist of the defendant's verbosity.

Jean Macarthur's answers, whether given to her counsel, the magistrate, the defendant or the clerk, had come with the slow deliberation of careful consideration in a soft, rather shy voice to which, however, her Scottish accent gave firmness. Her evidence carried conviction but it required corroboration " in some material particular."

Corroboration

" Call Letty Gartman," said counsel with his face to his brief.

" Betty Garton," called Sergeant Quing from the door which opened onto the waiting-hall. Nobody came forward and the voice of P.C. Jympton, the doorkeeper, could be heard in the distance shouting " Bessy Carter." Then from the back of the court a woman advanced dubiously. " Here she is," said counsel. " I'm sorry, sir. I didn't know she'd remained in court. I'd told her to stay outside during the hearing of the case, but maybe she didn't hear me properly. She is a little hard of hearing, I'm afraid."

" Didn't you see the notice, madam ? " said Mr. Sutterthwick raising his voice and pointing to a large printed warning headed " Witnesses." Mrs. Gartman appeared to see it for the first time and became confusedly apologetic. " I've never been in such a place before. I didn't realise I was doing wrong. I don't know the rules, you see, sir," she explained.

" Well, we do our best to make them known," said the magistrate. " The notice is big enough." So it was—even bigger than the " No spitting " and " Photographing and sketching prohibited " ones.

" Shall I swear her, sir ? " inquired Sergeant Quing.

" Oh yes, certainly," replied Mr. Sutterthwick, " Her evidence isn't invalid. If she's hard of hearing I don't suppose she's heard much of what's been said, in any case." That appeared most probable indeed when Mrs. Gartman came to give her testimony. Fortunately her ears could still respond to the trained voice of a barrister, and the main difficulty was to get her to comply with one of the court's most frequent requests and " speak up so that the defendant can hear." However, there was not much Mr. Forbes-Gale had to get from her. She had occupied the first floor at the time when Mr. and Mrs. Lalong were sharing the hall floor with Miss Macarthur—or, rather, Mrs. Macarthur, as the witness knew her. Mrs. Gartman remembered Mrs. Lalong going to hospital to have her second child. She knew that Mrs. Macarthur helped to look after the little boy while his mother was away. She had seen the complainant going into the Lalong's room but she had never seen any familiarity between her and the defendant. They seemed just friendly. The witness was present when Lalong in front of his wife was accused by the complainant of being the father of the child. He denied it but he did admit giving her ten shillings, though he said it was for looking after his son.

There was no note of any cross-examination in the clerk's minute book though the defendant's volubility, when given the opportunity to ask questions, was as great as ever.

" That is the complainant's case," said counsel when George Lalong had exhausted himself temporarily.

" But what do you rely on for corroboration, Mr. Forbes-Gale ? " demanded the magistrate.

" Quite simply, this, sir," said Mr. Forbes-Gale with a confidence he did not feel. " Evidence of association of these two people alone together in the same room for several days covering the material period, coupled with the colour and obvious racial characteristics of the child."

" But the association was admittedly for a perfectly proper purpose at its inception," objected Mr. Sutterthwick. " Merely proving opportunity for intercourse in circumstances which are innocent in themselves is not sufficient corroboration, as you know."

" I realise that, sir, but I submit that the complexion of the child in this case does—and I am not saying this facetiously—put a different complexion on the circumstances. I know that in the ordinary way you would not pay much attention to a resemblance between a child and its alleged father. But here there is a proved association with a coloured man followed by the birth of a coloured baby. Surely, sir, the inference is obvious ? "

" There is an obvious inference that some coloured man is the father, I agree. But there are a number of them in the district. If you want me to infer merely from the appearance of the child that the defendant must be its father, haven't you got to prove non access by all the others? You haven't done that and I don't see how you possibly could."

" With respect, sir, I don't think I have to go as far as that. I have only to establish a prima facie case for the complainant. She has sworn that she has had nothing to do with any coloured man except this defendant. I ask you to accept as corroboration of that statement the association of the parties plus the colour of the child."

"I can't make something out of two nothings unfortunately."

Mr. Forbes-Gale realised that his argument could make no effect on the magistrate, however long he spoke. " Perhaps, sir, a blood test might help if you could see your way to ordering one," he ventured.

" I've got no power to order one," said the magistrate, " And, anyway it could only help the defendant really; it might prove conclusively that he was not the father; it could never establish for the complainant that he was. At best, all that the experts could say would be that he might be the father, and that would apply to all the other men in the same blood group."

" Very well, sir. I can't carry the case any further, I'm afraid," said counsel and sat down.

" You've done everything possible, Mr. Forbes-Gale, but I must dismiss this case for want of corroboration," announced Mr. Sutterthwick. " That gives the complainant the right to try again if by any chance she gets some further evidence." He bent towards the clerk and murmured, " I believed that girl and I'd have liked to find for her, but I didn't see how I could on the evidence." Frell nodded in agreement. There was no time for more; the next case was on them.

The Domestic List

Marriage

" Clear the court. Everybody outside, please," called the warrant officer. The remaining cases concerned legitimate, not illegitimate, unions and might not be heard with the general public present. The audience at the back of the court shuffled reluctantly out; only the officers of the court and the newspaper reporter remained. Sergeant Quing called one name only for the first case in the " domestic " list. Nineteen year old Elizabeth Welsh had come to ask the court's consent to her marriage on the ground that her father was inaccessible. She had been brought up by her aunt after the death of her mother in her early infancy; her father had gradually taken less and less interest in her and had finally disappeared, but her aunt had never been made formally her guardian.

The court did not spend long over Elizabeth Welsh's case. She had to testify on oath as to her age, the length of time she had known her fiancé, where they were going to live, the impossibility of tracing her father, and her financial position. Then a question to the aunt to verify that she was perfectly satisfied with the match, a few words with the fiancé, a steady, twenty-two year old clerk in a stockbroker's office, and Mr. Sutterthwick was able to perform the rare magisterial feat of giving a decision which pleased everyone.

Desertion

As Elizabeth Welsh left the courtroom arm in arm with her fiancé, another couple entered it at arm's length. Mrs. Daisy Thurgood was summoning her husband Ronald for desertion. He did not dispute it and so her evidence could be taken quite shortly. Frell administered the formal interrogatory: full name and address: date of marriage: dates of birth of children of the marriage: date of desertion: not back since: rent and earnings: husband's earnings, if known? Mr. Sutterthwick studied both parties carefully while Mrs. Thurgood related that she had two children, a boy and a girl aged nine and seven respectively, that she had now had to take work in an office at £5 a week, and that her husband was a cabinet-maker averaging between £7 and £8 a week, plus overtime.

"Is there another woman in the picture?" asked the magistrate when all the necessary particulars had been obtained.

"No, sir," was the prompt reply from the husband.

"Well, is there any real reason why you two shouldn't make it up, forget the past and live together again?"

Tears slowly filled the woman's eyes and she turned and looked towards her husband, but he only shook his head firmly and said, "No, sir. It's no use. We've tried and we just don't get on together."

"Don't forget there are the children to consider as well as yourselves," pursued the magistrate.

"I'll see they don't want, sir."

"But they do want. They want a father as well as a mother."

"I don't think it's any good for them, sir, us being together and always jangling."

Mr. Sutterthwick addressed himself to Caylip; "Can you do anything in this case?"

The probation officer stood up and said "I've seen both the parties, sir. In fact, I've had several interviews with them. As you can see, the wife is perfectly willing to have Mr. Thurgood back. But he seems to have definitely made up his mind that he can't get on with her. I don't think there's any hope of my being able to do any more at the moment. A little later, when Mr. Thurgood has had some experience of living on his own, perhaps. . . ."

Caylip sat down and Mr. Sutterthwick said to the defendant, "What offer do you make with regard to maintenance?"

"£3 a week, sir."

"That was about the figure I had in mind. But it's better if it comes from you as well. I'll make it £1 a week for your wife and £1 a week for each of the two children until they're sixteen and your wife will be given custody of them. The order will be payable through the court so that there shan't be any disputes over matters of account between you. You won't have to meet each other just to pay and receive money, but I shall order that you, Mr. Thurgood, have access to the children at all reasonable times, and I hope you'll continue to take an interest in your family. This maintenance order isn't any bar to your making a fresh start with your married life if, after a time, you realise it's worth another try."

Cruelty

The couple left the courtroom still at arm's length and Sergeant Quing called on the last case in the list. Mr. Sutterthwick looked at his register and saw that the complaint was persistent cruelty to a wife. The time was a quarter to five. He bent towards Frell and said "If this is a fight I shall have to adjourn it." But the warrant officer brought back only one person from the waiting hall; it was the husband in the case.

"Where's your wife?" said the magistrate.

"She isn't going on with the summons, sir. We've made it up."

"In a case of this kind I'd rather hear that from your wife, herself. Do you know anything about this, Mr. Caylip?"

"No, sir. When we last saw the wife she was determined not to live any more with her husband."

"I shall adjourn the case for a week for you to make inquiries and satisfy yourself that there's been no duress here. If there's been a genuine reconciliation nobody need attend next time and I'll just mark the case 'no parties'."

The day's work

"That completes your worship's list for today," announced Sergeant Quing in almost a congratulatory manner.

Mr. Sutterthwick rose a trifle stiffly and bowed punctiliously to an almost empty courtroom. The atmosphere was stale with humanity. He felt almost as if he had been mass-producing justice on an endless belt. He was tired and conscious that he was nearing the age of retirement.

On his journey home he met an acquaintance who said, "I see from the evening paper that you gave it hot today to some fellows who'd been stealing stuff from their employers."

"Did I?" said Mr. Sutterthwick.

"The papers don't seem to like these sort of chaps being put inside nowadays, do they?" pursued his acquaintance.

"Don't they?" said Mr. Sutterthwick.

And that heavily sub-edited paragraph in the paper was all that the general public would ever know of the magistrate's work that day.

Local Authority Prosecutions

By Ronald P. Crompton, M.A.(Oxon)
Deputy Town Clerk of the Borough of Middleton

Instituting proceedings

Those who have to defend proceedings by local authorities are often concerned to see whether the authority are properly conducting these proceedings and for this reason local authorities usually produce as evidence the minutes of the council in order to show that all procedural requirements have been followed. Technical objections can of course be carried too far. (One advocate insisted that it was wrong that the complaint had been taken before the mayor of the borough, who was *ex officio* justice of the peace and whom he considered an interested party, until it was pointed out that it would be difficult to find any magistrate who was not either a mayor, alderman or a burgess and that the function of witnessing a complaint was not a judicial function.) At the same time those who are defending are entitled to insist that proper authority is produced. The law is contained in the Local Government Act, 1933. Under section 276 the local authority are entitled to prosecute or defend proceedings where they deem it expedient for the promotion or protection of the interests of the inhabitants of their area. Usually the actual proceedings are authorised by a committee of the council and confirmed by the council unless the powers are delegated. There are therefore either two resolutions to be perused or one resolution and a proof of delegation. If these resolutions are actually sealed by the council this should be accepted but otherwise it is sufficient, by reason of the Third Schedule, Part V, to the Local Government Act, 1933, if the minute book is signed at the same or next ensuing meeting of the local authority or committee by the person presiding thereat. The procedure may be simplified by the provisions of a particular Act. For instance in section 286 of the Public Health Act, 1936, it was provided that in proceedings *under that Act* a document certified by the clerk as a copy of a resolution or order shall be evidence of the passing of that resolution or order and similar evidence is permitted in regard to the appointment of and authority given to officers of the council.

Another point that can be taken is how far the officer who institutes proceedings is authorised to do so by the council. Very often a resolution of the council can be produced which will cover the situation. If an officer is authorised to institute proceedings that authority may be sufficient to cover delegation of a discretion as in the case of *James* v. *Stein* (1946) 110 J.P. 279, where it was held that the effect of section 277 of the Act of 1933 was to authorise a local authority to delegate to an officer its discretion regarding the prosecution of a manufacturer under section 83 (3) of the Food and Drugs Act, 1938. It is important also to consider whether an officer is able to institute proceedings on his own accord as an aggrieved person. Reference may be made for this to the case in the Divisional Court of *Snodgrass* v. *Topping* (1952) 116 J.P. 332, where irrespective of any authority from the council a chief sanitary inspector was held to be entitled to institute proceedings as a person aggrieved under the Food and Drugs Act, 1938.

Serving notices

Apart from authority to institute proceedings there may exist certain legal forms, *i.e.*, notices to quit and abatement notices which precede court action. The official must have either general or specific authority to serve these notices and he must not anticipate sanction of the council where the committee do not exercise delegated powers. In some, but not many cases, special authority is given to officials by the Act itself so that their powers are presumed if not rebutted. Each Act must be examined on its merits to see whether such a provision is made. In section 284 of the Public Health Act, 1936, authority is given in respect of notices, orders, consents or other documents to various officials of the council the principal ones being the clerk of the council, the surveyor, the medical officer of health and the chief financial officer. Any document signed by one of these officials in his particular sphere is according to the Act " deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the council." The words " until the contrary is proved " have not received judicial interpretation. Lumley's *Public Health*, 12th edition, Vol. III in a footnote at page 2748 says that such a signature is prima facie evidence only and that further proof of orders and resolutions can be given under section 286. With respect, the wording appears to demand more activity on the part of the defendant. It is quite conceivable that he may prove that perusal of council resolutions has failed to show any resolution authorising the document or has shown a resolution after the relevant date and yet it would not appear that the onus of proof moves as it were of its own accord without some sort of proof offered by him. Under the Housing Act, 1936, there is a similar provision in section 165 that any document purporting to be a certificate of a local authority and signed by the clerk to that authority shall be received in evidence and be deemed to be such a certificate without further proof unless the contrary is shown. The importance of the signature being that of the clerk or his lawful deputy is illustrated by the case of *Becker* v. *Crosby Corporation* [1952] 1 All E.R. 1350 where it was held that a notice signed by the housing manager was not a properly signed notice. Again there does not appear to be any case law to show what the defendant needs to refute that the document has been authorised by the local authority.

The importance of these procedural requirements is shown by the recent case of *Middleton* v. *Rowlett* [1954] Crim.L.R. 549. In this case it was held that the justices had a discretion to refuse to convict where a piece of evidence was not put in at the trial where this evidence was relevant to the facts on which the conviction was based. The inference appears to be that if authority to prosecute which is not directly part of the case is not produced the justices should adjourn the case, for instance if the minute book is not produced. But if a procedural requirement is not only not present but not in existence then it would appear that the justices must refuse to convict. Hence these notes are intended to give some guidance to practitioners as to what proof of authority to prosecute may properly be required from the local authority.

Practice and Procedure

Quarter Sessions

Probation orders made in respect of members of H.M. Forces

When a serving soldier, airman or sailor is, after conviction before quarter sessions, put on probation, it is sometimes provided by the court that supervision by the probation officer shall not commence until the defendant has left Her Majesty's service; this is of course most frequently done where the defendant is a national serviceman, having but a few months more service to carry out, and the probation order is made for a period of three years. Incidentally, it should be made clear that in such a case the period of three years runs from the date of the order, not from the end of National Service.

This practice is no doubt adopted because of the natural difficulty experienced by a probation officer in exercising supervision over a serving soldier, etc. Even the name of the correct supervising court may be difficult to ascertain, this being governed by the " residence " of the defendant (Criminal Justice Act, 1948, s. 3 (2)), but it is submitted that residence in this context refers to the defendant's ordinary home, rather than to his present Army or Air Force station—or to his ship.

Postponement of supervision in this way may, however, give rise to difficulties if the defendant breaks a requirement of the probation order while the order is so in a state of "suspended animation"; for example, he may commit a serious crime whilst on overseas service (a "further offence" within section 8 of the Act of 1948, must be committed in Great Britain), or he may otherwise break the requirement to "be of good behaviour and keep the peace," so rendering himself prima facie liable to the procedure of section 6. In such a case, however, it seems there will be no supervising court—supervision having been suspended—and so no bench of magistrates will have jurisdiction to investigate the allegation or to commit him to appear before quarter sessions.

During the period of suspension therefore, the probation order is virtually ineffective. It could even be argued that such suspension not being warranted by the statute which provides the power to make a probation order, invalidates the order *ab initio*. It would be interesting to know how generally this practice is adopted by courts of quarter sessions—it is certainly popular amongst the probation service. The difficulty does not arise with probation orders made by courts of summary jurisdiction, for in that case any justice acting for the petty sessional division for which the court making the order acts, has jurisdiction under section 6 (2) of the 1948 Act. [J. F. Garner, Clerk of the Peace, Borough of Andover.]

Case and Comment

[Reports of cases included here are prepared by C. J. Ellis, *Barrister-at-Law*, unless otherwise appears]

Indecent Exposure—*Intention—difference between Army Act and Vagrancy Act*

R. *v.* Washer[1] (Courts-Martial Appeal Court: Lord Goddard C.J., Lynskey and Parker JJ.: October 11, 1954).

W., an Army sergeant, was convicted of disgraceful conduct of an indecent kind, by exposing himself to a young child. One of the grounds of his application for leave to appeal against conviction was that he was drunk at the time of the alleged commission of the offence, and there was no evidence which showed an intention to insult or annoy the child.

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[1] The applicant did not appear and was not represented.

Held, dismissing the application, that the charge was not one under the Vagrancy Act, 1824, but was under section 18 (5) of the Army Act, under which it is an offence for a person subject to military law to commit any disgraceful conduct of an indecent kind; W.'s conduct, whether intentional or not, was disgraceful conduct of an indecent kind and he was rightly convicted.

COMMENTARY. The Vagrancy Act, 1824, s. 4, provides: "Every person wilfully . . . exposing his person . . . with intent to insult any female . . . shall be deemed a rogue and vagabond, within . . . this Act [and may be committed to prison]."

See Stone, 86th ed., 2363.

Indictment—*Amendment—close of case*

R. *v.* WATMOUGH [2] (Court of Criminal Appeal: Hilbery, Lynskey and Parker JJ.: October 4, 1954).

S., V. and F. were convicted of office-breaking and larceny together with W., who was convicted of being an accessory after the fact to that offence. The count in the indictment charging W. with being an accessory omitted to include F.'s name. At the conclusion of the evidence an application was made to include F.'s name in the count charging W. with being an accessory, which the judge allowed under section 5 (1) of the Indictments Act, 1915. On W.'s appeal against conviction:—

Held, dismissing the appeal, that it was not necessary to make the amendment to support W.'s conviction as an accessory because on the facts he had clearly aided and abetted V., but, following *R.* v. *Pople* [1951] 1 K.B. 53, the amendment could not have done any injustice to W. and the trial judge had correctly exercised his discretion.

COMMENTARY. Delivering judgment in this case Hilbery J. said: "We do not dissent at all from what was said in *R.* v. *Pople, supra* . . . When the court was saying . . . that there may well be amendments which may be made which would be oppressive and embarrassing to the accused if made at the close of the case for the prosecution, the court is impliedly saying there that it recognises that an amendment can be made at the conclusion of the proceedings."

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[2] For the appellant: *M. Morland* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *Neville Laski Q.C.*, *M. Carlisle* (instructed by Lees & Riches).

Section 5 (1) of the Indictments Act, 1915, permits an amendment "before trial, or at any stage of a trial . . . unless, having regard to the merits of the case, the required amendments cannot be made without injustice."

See Archbold, 33rd ed., 52.

Intoxicating Liquors — *Licensed premises — music — using premises without licence*

McDOWELL *v.* MAGUIRE[3] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Parker JJ.: October 13, 1954).

A licensee of a public-house was charged on three informations with using the premises for public music without a licence contrary to section 16 of the London County Council (General Powers) Act, 1915, as amended by section 55 of the Act of 1935. The saloon bar of the premises was fitted with a raised platform, microphone, loud speaker and footlights, and the musical instruments used consisted of a piano, accordion, double bass and drums. All the members of the orchestra were identically dressed in blazers, grey trousers and white shirts. The instruments and the blazers were provided by the licensee. The players, who worked elsewhere during the day, and were customers of the licensee, were provided with free drinks by members of the public. The defence relied on *Brearley* v. *Morley* [1899] 2 Q.B. 121. The magistrate dismissed the informations. The prosecutor appealed.

Held, allowing the appeal, that on the facts, the licensee was clearly providing the music; the premises were being used for that purpose, and the licensee should be convicted. [Reported by J. D. Pennington, Esq., *Barrister-at-Law.*]

COMMENTARY. In *Brearley* v. *Morley, supra,* a licensee who kept a piano in the public smoke-room which customers used to play for their own amusement, no charge being made for its use or the entertainment thus provided, was held to have been wrongly convicted of keeping premises for public entertainment without a licence.

Jury—*Direction to—driving under influence of drink.* See R. *v.* WARD, p. 940, below.

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[3] For the appellant: *Paul Wrightson* (instructed by J. G. Barr). For the respondent: *T. Springer* (instructed by Marson & Toulmin).

Magistrates—*Decision—alteration whilst in session*

Warne *v.* Martin[4] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Parker JJ.: October 15, 1954).

A complaint was preferred against M. by a police superintendent for keeping two dogs over six months old, contrary to the Dog Licences Act, 1867, s. 8. The justices found that M. had kept the dogs without having a licence or a certificate of exemption pursuant to the Customs and Inland Revenue Act, 1878, s. 22. For the police it was contended that the onus of proving that he either held a licence or a certificate of exemption at the relevant date lay on the defendant, who in his turn contended that he had applied for a certificate of exemption. The justices held that the case against the defendant was not proved and dismissed the complaint. After they had announced this decision but while they were still in session, they were addressed by the complainant who submitted that the onus lay on the defendant to prove that he held either a licence or a certificate of exemption. The justices were of opinion that in law their power to alter their decision while still in session could be exercised only by a decision more favourable to the defendant, and accordingly adhered to their original decision to dismiss the complaint. They added that if they had thought they could alter their decision unfavourably to the defendant they would have made a fresh decision and convicted him. The police appealed by case stated.

Held, allowing the appeal, that where a judge or magistrates gave a decision, and before it was drawn up found that they had gone wrong, they could alter it. They ought to have altered it, and the case should go back to them to make a fresh decision. [Reported by Miss M. M. Hill, *Barrister-at-Law.*]

Commentary. See Stone, 86th ed., 257; Paley, 10th ed., 67; Rouse Jones, 206.

Manslaughter — *Assault committed with another — cause of death—injuries inflicted by other*

R. *v.* Garforth[5] (Court of Criminal Appeal: Hilbery,

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[4] For the appellant: *A. Mildon* (instructed by Burton, Yeates & Hart, for Vivian Thomas & Jervis, Penzance).

[5] For the appellant: *J. B. Herbert Q.C.*, *E. J. Parris* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *J. B. Willis* (instructed by the Director of Public Prosecutions).

Lynskey and Glyn-Jones JJ.: November 1, 1954) (*The Times*, November 2, 1954).

G., aged 16, and a young man S., quarrelled with E., aged 18, outside a dance-hall. S. kicked E. and when he doubled up stabbed him in the neck and heart, then G. kicked him on the body and legs and S. kicked him on the head. S. was found guilty of murder and G. was found guilty of manslaughter and sentenced to three years' imprisonment. G. appealed against his conviction on the ground that there was no evidence that what he did was a cause of death.

Held, dismissing the appeal, that there was clear evidence that G. unlawfully assaulted E. and inflicted minor injuries which contributed to the death. Had the jury found that G. intended to do grievous bodily harm, he would have been guilty of murder.

National Insurance—*Sickness benefit—detention in legal custody of mentally sick criminals*

R. *v.* NATIONAL INSURANCE COMMISSIONER, *ex p.* TIMMIS, COX AND JAMES[6] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Ormerod JJ.: October 19, 1954) ([1954] 3 W.L.R. 614; [1954] 3 All E.R. 292).

T., C. and J., all of whom had committed criminal offences, were ordered to be detained in mental institutions, T., who was found to be of unsound mind, under section 24 of the Criminal Justice Act, 1948, and C. and J., who were both mental defectives, under the Mental Deficiency Act, 1913. The National Insurance Commissioner held that all three were undergoing "detention in legal custody" within the meaning of section 29 (1) (*b*) of the National Insurance Act, 1946, and were therefore not entitled to sickness benefit under the Act. On applications for orders of certiorari to quash the commissioner's decisions:—

Held, refusing the applications that (1) "detained in legal custody" in section 29 (1) meant that a person was to be disqualified from receiving benefit if he was detained by reason of the decision and order of a court exercising criminal jurisdiction; (2) in the case of an order made under section 24 of the Act of 1948, the matter was put beyond doubt by section 66 of that Act, which provided that a person authorised under the Act to be kept in custody was "deemed to be in legal custody."

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[6] For the applicants: *J. P. Widgery* (instructed by the Official Solicitor). For the Minister of Pensions and National Insurance: *J. P. Ashworth* (instructed by the Solicitor, Ministry of Pensions and National Insurance).

Police—*Discretion as to charges.* See R. *v.* NUNEATON JUSTICES, *ex p.* PARKER, p. 939, below.

Quarter Sessions—*Appeal to—question of costs only*

R. *v.* LANCASTER QUARTER SESSIONS, *ex p.* HUYTON-WITH-ROBY URBAN DISTRICT COUNCIL[7] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Parker JJ.: October 13, 1954) ([1954] 3 W.L.R. 597; [1954] 3 All E.R. 225).

Justices, having allowed an appeal under section 300 of the Public Health Act, 1936, by owners of certain premises against the local authority's requirement that they should provide a dust-bin for the premises, without calling on counsel or giving their reasons, refused to make an order as to costs. The owners successfully appealed to quarter sessions on the question of costs. The local authority applied for an order of certiorari to quash quarter sessions' order on the ground that they had no jurisdiction to entertain an appeal on a question of costs only.

Held, dismissing the application, that the owners, having succeeded before the justices, were entitled to have their application for costs dealt with in a judicial manner. Unless the justices exercised their discretion judicially, the owners were persons "aggrieved" by the order within the meaning of section 301 of the Act and had a right to appeal to quarter sessions.

COMMENTARY. The court referred to the judgment in *R.* v. *Surrey Quarter Sessions, ex parte Lilley* [1951] 2 K.B. 749, where it was held that a person against whom costs are awarded by a court in the exercise of its discretion is a person "aggrieved" by the order within the meaning of section 301.

See Stone, 86th ed., 1890.

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[7] For the applicant council: *Paul Wrightson* (instructed by Sharpe, Pritchard & Co. for H. E. H. Lawton, Huyton). For quarter sessions: *Basil Nield Q.C.*, *G. B. H. Currie* (instructed by Purchase, Clark & Treadwell for Rollo & Mills-Roberts, Liverpool).

Railways—*Touting for custom on railway property*

CHENERY *v.* MATTHEWS, STURGEON, MAYO AND BALDERSON[8] (Southend-on-Sea Magistrates' Court: Miss E. A. T. Senier, Chairman : October 19, 1954).

The defendants were charged with touting for custom on railway property under By-law 19 of the London Midland and Scottish Railway Co., which is still enforceable by virtue of the Transport Acts, 1947 and 1953, and the British Transport Commission (Executives) Order, 1953. A police-constable of the British Transport Commission Police was keeping watch on Matthews and Sturgeon at Southend Central Station on September 20, 1954, when he saw them stop passengers who had come off trains and heard them inquire whether they required lodgings. Later the same day he saw Mayo and Balderson at the station and heard them asking passengers whether they required lodgings. Mayo, who appeared in answer to the summons and pleaded not guilty, said she had not mentioned lodgings to anyone and had only gone to the station to talk to a friend. Letters from Balderson and Matthews were read in which they said the offences were committed because of this year's very bad holiday season and the demand for rates, etc., which had to be met, and for which they had not made enough profit.

The magistrates found the case against each defendant proved and imposed a fine of 10s. on each. [Reported by C. F. Moore, *Assistant Clerk to the Justices.*]

Road Traffic—*Dangerous and careless driving—summons*

R. *v.* NUNEATON JUSTICES, *ex p.* PARKER[9] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Parker JJ.: October 13, 1954) ([1954] 1 W.L.R. 1318; [1954] 3 All E.R. 251).

A car accident having occurred in which no one was hurt, a police inspector applied to the justices to issue a summons for driving without due care and attention contrary to section 12 of the Road Traffic Act, 1930. The chairman said that he was prepared to issue a summons for dangerous driving contrary to section 11, but as a matter of principle he would not issue a summons for careless driving unless he was satisfied that there could not possibly be a conviction for dangerous driving. The chairman had relied on certain remarks by Devlin J. in *Re Beresford* ((1952) 36 Cr.App.R. 1). The prosecutor applied for an order of mandamus directing the justices to issue the summons under section 12.

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[8] For the British Transport Commission: Mr. R. C. L. Bright, Solicitor.

[9] For the applicant: *Paul Wrightson* (instructed by Sharpe, Pritchard & Co. for R. M. Willis, Warwick). The respondents did not appear and were not represented.

Held, allowing the application, that in *Re Beresford*, where Devlin J. was concerned with whether it was desirable to charge a defendant with manslaughter where death had taken place, he was not giving directions but was making a recommendation to the police as to the charge they should make. Justices had no right, when a prosecutor asked for leave to prefer a charge, to say that he had to prefer the more serious charge because that was, to a certain extent, prejudging the issue.

COMMENTARY. In *Re Beresford, supra,* Devlin J. said: "The police can never be criticised if the jury thinks it right to reduce the charge, nor even if the judge thinks it proper to withdraw it from the jury . . . There are, I believe, too many cases where the justices are prevented from dealing with dangerous driving as such because the police have preferred the lesser charge."

In the present case Lynskey J. said: ". . . the police ought always, in my view, where the facts support it, to bring the more serious charge rather than the lighter charge."

See Stone, 86th ed., 2042–5; [1954] Crim.L.R. 537.

Road Traffic—*Driving under influence of drink—dangerous driving*

R. *v.* WARD [10] (Court of Criminal Appeal: Hilbery, Lynskey and Parker JJ.: October 4, 1954).

W. was charged first, with driving a motor-car while under the influence of drink to such an extent as to be incapable of having control of the vehicle, and secondly, on the same occasion, with driving dangerously. The recorder twice directed the jury that if they were satisfied that W. was driving his car while under the influence of drink to such an extent as to be incapable of having proper control of the vehicle, then W. was also guilty of dangerous driving. He also directed them that if W. was not guilty on the first charge they were to find him not guilty on the second charge. W. was found guilty on both counts and sentenced to six months' imprisonment and disqualified from driving for two and a half years. He appealed against conviction and sentence.

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[10] For the appellant: *A. P. Marshall Q.C., G. A. J. Smallwood* (instructed by Twyford & Co. for C. C. Ladds, Birmingham). For the Crown: *A. W. M. Davies* (instructed by M. P. Pugh, Birmingham).

Held, that in view of the recorder's directions it was impossible to discover whether the jury ever applied their minds to the evidence of dangerous driving and, accordingly, the conviction on that count would be quashed. The sentence did not err in principle and the appeal would be dismissed.

COMMENTARY. Giving judgment, Hilbery J. said: "The mere fact that a man is driving his car when under the influence of drink so as not to be capable of having proper control of the vehicle does not amount of itself to any evidence of dangerous driving. Dangerous driving has to be considered objectively having regard to what he is doing with the car. It may be that he is driving the car under the influence of drink to such an extent as to be incapable of having proper control and yet not be doing anything which in the opinion of the jury amounts to actual dangerous driving."

Road Traffic—*Driving without effective insurance—conditional discharge not to be used to avoid disqualification*

SURTEES *v.* BENEWITH [11] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Parker JJ.: October 11, 1954) ([1954] 1 W.L.R. 1335; [1954] 3 All E.R. 261).

B. was charged with using a car without a third party insurance being in force with regard to its use, contrary to section 35 of the Road Traffic Act, 1930. The justices were not satisfied that there were special reasons for not disqualifying him from driving, but taking into account his several attempts to obtain insurance cover, his lack of knowledge of insurance practice, his previous good character and the fact that he did not intentionally attempt to evade the law, gave him a conditional discharge under section 7 (1) of the Criminal Justice Act, 1948. The prosecutor appealed.

Held, allowing the appeal, applying *Dennis* v. *Tame* [1954] Crim.L.R. 472, that the court could only use the machinery of conditional discharge to avoid disqualification if there were circumstances in the case which would amount to special reasons for not disqualifying.

COMMENTARY. See Stone, 86th ed., 2060–3.

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[11] For the appellant: *Paul Wrightson* (instructed by the Solicitor for the Metropolitan Police). The respondent did not appear and was not represented.

Road Traffic—*Driving without effective insurance—vehicle insured for "social, domestic and pleasure purposes"*

LEE *v.* POOLE[12] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Ormerod JJ.: October 21, 1954).

L. was charged with using a motor-van without there being in force, in regard to its use, a third party insurance policy, contrary to section 35 of the Road Traffic Act, 1930. L. was convicted, fined £10 and disqualified from driving for a year. The motor-van was insured for motor trade purposes including the carriage of goods and for use by L. for "social, domestic and pleasure purposes." The policy did not cover carriage of other goods for hire or reward or conveyance of persons for hire or reward. L. used the van for moving a friend's furniture. The offer to use the van for that purpose was made as an act of friendship and was not a business transaction, and L. received no payment or reward for using the van. On appeal to quarter sessions, the chairman allowing the appeal, held that the van was being used for social, domestic and pleasure purposes and was therefore insured. On appeal by the prosecutor:—

Held, dismissing the appeal, that L. was carrying the furniture as an act of friendship and it came within the expressions "social, domestic and pleasure purposes." The policy drew a distinction between the van being used for business purposes and other purposes and the user complained of was not a business purpose.

COMMENTARY. See Stone, 86th ed., 2060–3.

Road Traffic—*Excise duty—use of tractor for non-agricultural purposes*

BROOK *v.* FRIEND[13] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Ormerod JJ.: October 19, 1954).

F. was charged under section 13 (2) of the Vehicles (Excise) Act, 1949, with using a motor-vehicle, for which he had paid duty at the rate of £2, for the use of which a licence at a higher rate was required. F.'s tractor was used on the occasion in question to haul a trailer on which was loaded some bricks and a fireplace, which were carried from F.'s farm along a public road to a cottage owned by F. and occupied by one of his farm hands, and for which cottage the fireplace was required. The prosecutor contended that the use of the tractor did not come within the exemption in section 4 (2) (*a*) (ii) because it was not hauling from one part of F.'s farm to another, articles required for the farm. He referred to *Wilshire* v. *Lapthorne* (unreported), in which a tractor was hauling furniture from a farm to a sale room, and Lord Goddard C.J. there said that furniture removing jobs, even though for the farm, were not covered by the exemption in section 4. It was not contested that the cottage was part of F.'s farm, and F. contended that his use of the tractor came within the exemption. The justices found that the facts in *Wilshire's* case were different, and that on the evidence the cottage was part of the farm and the use of the tractor came within the exemption, and they dismissed the information.

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[12] For the appellant: (Mrs.) *E. V. Lane* (instructed by Denton, Hall and Burgin for Herbert Simpson Son & Bennett, Leicester). For the respondent: *R. C. Vaughan Q.C.*, *E. F. Jowitt* (instructed by Chapman & Goddard, Leicester).

[13] For the appellant: *F. Lawton* (instructed by Wontner & Sons for I. P. Ll. Jones, Exeter). The respondent was not represented and did not appear.

Held, allowing the appeal, that the use of the tractor did not come within the exemption and, therefore, the justices should have convicted; but the court would not find fault with the justices if they imposed a mitigated penalty by granting a conditional discharge.

COMMENTARY. See Stone, 86th ed., 2141–2.

Road Traffic—*Uncontrolled crossing—school crossing patrol on duty*

POLICE *v.* DEUCHAR [14] (Newcastle-upon-Tyne Magistrates' Court: Mrs. I. M. D. Houston, Chairman: October 5, 1954).

The defendant was charged with failing to give precedence to a foot-passenger within the limits of an uncontrolled crossing, contrary to regulation 4 of the Pedestrian Crossing (General) Regulations, 1951, and with driving a motor-car without due care and attention, contrary to section 12 of the Road Traffic Act, 1930. He had knocked down a schoolgirl on a pedestrian crossing. A school-crossing patrol was on duty there, but when the girl crossed he was on the other side of the road and the girl did not wait for him to stop the traffic. For the defendant it was submitted that the crossing was not uncontrolled; the regulations defined an uncontrolled crossing as one at which traffic was not for the time being controlled by a police officer in uniform, and while on duty the patrol was vested with the powers of a police officer.

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[14] For the prosecution: Mr. D. E. Brown, Solicitor. For the defendant: Mr. T. H. Campbell Wardlaw, Solicitor.

Held, the defendant was guilty of both charges. He was fined £5 on the first charge and £20 on the second. His driving licence was suspended for one month. [Reported by T. H. Campbell Wardlaw, *Solicitor*.]

COMMENTARY. The Regulations of 1951 have been replaced, see [1954] Crim.L.R. 394, but the definition of an uncontrolled crossing has not been altered.

Sentence—*Indecent assault—sentence of corrective training*

R. *v.* MURPHY [15] (Court of Criminal Appeal: Hilbery, Lynskey and Parker JJ.: October 5, 1954) (*The Times*, October 6, 1954).

M., aged 59, applied for leave to appeal against a sentence of four years' corrective training for indecent assault on a little girl, aged six. M.'s past history showed that he was a menace to young children. The Prison Commissioners reported that he was unsuitable for corrective training.

Held, treating the application as the hearing of the appeal, that the sentence erred in principle as it was imposed, not with any hope of training M., but with the object of preventing him from being a menace to children. The sentence would be varied to one of two years' imprisonment, although it was much too little in circumstances such as the present.

COMMENTARY. The maximum sentence for indecent assault is two years which in many cases, as the court has often pointed out, is not sufficient: *e.g.*, *R.* v. *King* [1954] Crim.L.R. 381.

See Archbold, 33rd ed., 1095.

Theatres—*Unauthorised production—causing or permitting unauthorised additions*

LOVELACE *v.* D. P. P.[16] (Q.B., Divisional Court: Lord Goddard C.J., Lynskey and Ormerod JJ.: October 21, 1954) (*The Times*, October 22, 1954).

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[15] The applicant did not appear and was not represented.

[16] For the appellant: *J. Robertson Crichton Q.C.*, *J. M. Kennan* (instructed by Arthur Taylor & Co. for Mace and Jones, Liverpool). For the respondent: *J. P. Ashworth* (instructed by the Director of Public Prosecutions).

L., the licensee of a theatre, put on a play "The Respectable Prostitute," which was authorised for presentation by the Lord Chamberlain. Realising that there might be objections if the approved stage directions were not strictly adhered to, he took every precaution to warn the actors and insist that they adhere strictly to the text and stage directions. In the last scene the principal actor departed from the stage directions and went through motions which were objected to as indecent. L. was charged under section 15 of the Theatres Act, 1843, with "causing" the play to be presented with unauthorised additions, and convicted and fined £10. The actor was convicted of acting a part in a play not authorised by the Lord Chamberlain. On L.'s appeal against conviction:—

Held, allowing the appeal, that there was no evidence of any "causation." Although a prohibition might be absolute so that *mens rea* or *scienter* was not necessary, different considerations applied when one was charged with "causing" or "permitting" an act to be done, because one could not "cause" or "permit" unless one had knowledge of the facts.

COMMENTARY. Section 15 of the Theatres Act, 1843, provides that: "Every person who for hire shall act or present, or cause to be acted or presented, any new stage play . . . or any part thereof, until the same shall have been allowed by the Lord Chamberlain . . . shall" be guilty of an offence.

See Stone, 86th ed., 2278.

Acts and Orders

Agriculture

WATERMARK DISEASE (HERTFORDSHIRE) (AMENDMENT) ORDER, 1954 (S.I. No. 1411): operative November 1, 1954.

The Order of 1953 (S.I. No. 1084), which provides for the control of watermark disease of willows, is extended to apply to further parts of Hertfordshire.

British Commonwealth

BASUTOLAND, BECHUANALAND PROTECTORATE AND SWAZILAND ORDERS IN COUNCIL, 1954, COURT OF APPEAL (S.I. No.

1369); APPEALS TO PRIVY COUNCIL (S.I. No. 1370): both operative on a day to be appointed.

A new Court of Appeal is established to hear such appeals from the courts of these territories as may be prescribed by their laws. The President may make Rules of Court regulating the court's practice and procedure, and may so prescribe the cases in which an appellant in a criminal appeal shall be entitled to be present at the hearing of the appeal. In criminal matters an appeal will lie to the Privy Council from a judgment of the court at the discretion of the court, if in its opinion the matter is of sufficient general or public importance.

Previous Orders in Council regulating appeals from these territories to the Privy Council are revoked.

Customs and Excise

EXPORT OF GOODS (CONTROL) (AMENDMENT NO. 2) ORDER, 1954 (S.I. No. 1322): operative October 20, 1954.

The principal Order (S.I. No. 118; see [1954] Crim.L.R. 312) has been further amended.

Dangerous Drugs

DANGEROUS DRUGS ACT, 1951 (APPLICATION) (NO. 2) ORDER, 1954 (S.I. No. 1367): operative November 1, 1954.

Part III of the Dangerous Drugs Act, 1951, which imposes certain controls with regard to medicinal opium, cocaine, morphine and certain other drugs, is made to apply to 3-Dimethylamino-1 : 1-di-(2-thienyl)-1-butene, 3-Ethylmethylamino-1 : 1-di-(2-thienyl)-1-butene, 6-Piperidino-4 : 4-diphenylheptan-3-one, their salts and any preparation or substance containing them.

Food and Drugs

IMPORTED CANNED FRUIT (REVOCATION) ORDER, 1954 (S.I. No. 1430): operative January 1, 1955.

Canned apricots, peaches and pears are freed from price control.

MILK AND DAIRIES (AMENDMENT) REGULATIONS, 1954 (S.I. No. 1268): operative September 30, 1954.

The Milk Marketing Board need not register as distributors of milk except when they are trading at or from premises where milk is handled by them.

The Amendment Regulations of 1953 (S.I. No. 1876) are revoked but without prejudice to proceedings for contravention of the Regulations of 1949 (S.I. No. 1588) as amended thereby.

WELFARE FOODS ORDERS, 1954, GREAT BRITAIN (S.I. No. 1401); NORTHERN IRELAND (S.I. No. 1402): both operative October 31, 1954.

The Order of 1953 (S.I. No. 725) is replaced with amendments. Beneficiaries need no longer be registered with their milk suppliers and suppliers are not required to keep records of milk delivered to beneficiaries. Welfare foods documents issued in either country may be used in the other.

London

CITY OF LONDON (VARIOUS POWERS) ACT, 1954 (2 & 3 Eliz. 2, c. xxvii): operative July 5, 1954.

From such day after October 1, 1955, as is appointed by the common council, it will be an offence for smoke to be emitted from any premises in the city; the occupier will be liable to a fine not exceeding £10 and to a penalty not exceeding £5 for each day on which the offence is continued after conviction. It will be a defence if the smoke is caused by burning an authorised or approved fuel (s. 4).

Any assistant or additional judge of the Mayor's and City of London Court may appoint a barrister or solicitor of the Supreme Court of at least seven years' standing as his deputy to execute his duties at either of the City's justice rooms (s. 19).

The Commissioner of Police may appoint standings for hackney-carriages in the City and make regulations as to their use. For contravention of such regulations the penalty is a fine not exceeding £5 (s. 20).

Save for certain exceptions, any person who erects a structure over or under any street without a licence of the common council is liable to a fine not exceeding £20. The council may remove or alter any such structure and recover the cost from the person who built it (s. 21).

LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1954 (2 & 3 Eliz. 2, c. xxiv): operative July 5, 1954.

The London Building Acts are amended; the changes concern the register of conditional consents, which the L.C.C.

are no longer required to keep under section 28 of the Act of 1930, the height of buildings, the use of temporary structures and the approval of fire escapes (ss. 4–7).

The remuneration payable to an acting chairman or deputy chairman of quarter sessions may be varied by a resolution of the council approved by the Lord Chancellor (s. 15).

Barbers and hairdressers may be required to register themselves and their premises with the borough council and the council may make by-laws to insure the cleanliness of such persons and premises. The penalties for carrying on an unregistered business are a fine not exceeding £20 and, if the offence continues after conviction, a fine not exceeding £5 a day, and the penalty for contravening a by-law is a fine not exceeding £5. In either case the court may order the suspension or cancellation of a registration. In the latter case the certificate of registration must be delivered to the borough council, the penalty for failure to do so being a fine not exceeding £1. The same penalty is incurred for failure to display copies of the certificate of registration and any relevant by-laws on registered premises. In both cases, if the offence is continued after conviction, the offender is liable to a fine not exceeding 10s. a day. Persons duly authorised by the council may enter registered premises to inspect them and the equipment used at all reasonable times, and the penalty for obstructing them is a fine not exceeding £5 (s. 18).

It is an offence to deface public streets, buildings or other structures with propaganda writing without lawful authority. A person doing so is liable to a fine not exceeding £5, and the cost of reinstating the spoilt surface may be recovered from him (s. 20).

LONDON TRAFFIC (PRESCRIBED ROUTES) REGULATIONS, 1954, No. 20 (S.I. No. 1347): operative October 23, 1954; No. 21 (S.I. No. 1437): operative November 9, 1954.

The prescribed route detailed for St. John's Avenue, Harlow, now renamed Garden Terrace, is altered. Prescribed routes are detailed for Brook Street, Hanover Street, Maddox Street and Grosvenor Street in Westminster. Fines not exceeding £5 for a first offence and £10 for a subsequent offence may be imposed for contraventions.

Magistrates' Courts

PETTY SESSIONAL DIVISIONS (PEMBROKESHIRE) ORDER, 1954 (S.I. No. 1396): fully operative January 1, 1955.

The existing divisions of Castlemartin, Cemaes, Cilgerran, Dungleddy, the borough of Haverfordwest, Narberth, the borough of Pembroke, Roose and the borough of Tenby are abolished and new divisions of Cemaes, Haverfordwest, Narberth, Pembroke and Tenby created. The areas of other divisions in Pembrokeshire are altered.

Privy Council

See Basutoland, Bechuanaland Protectorate and Swaziland Orders in Council, p. 945, above.

Probation

PROBATION (NO. 2) RULES, 1954 (S.I. No. 1429): operative November 1, 1954.

North Wales and East Norfolk are added to the probation areas in which a principal probation officer or a deputy or assistant principal probation officer is employed. The scales of pay of such officers in Hertfordshire are increased.

Salmon and Freshwater Fisheries

HAMPSHIRE RIVER BOARD AREA (EELS AND ELVERS) ORDER, 1954 (S.I. No. 1425): operative October 26, 1954.

The Hampshire River Board may make by-laws with respect to eels and elvers for all the purposes relating to fresh water fish contained in section 59 of the Salmon and Freshwater Fisheries Act, 1923, except those relating to the annual close season. For penalties for contraventions of the by-laws, see section 74 of the Act.

Telegraphy

TELEX REGULATIONS, 1954 (S.I. No. 1350): operative November 15, 1954.

A service is provided by which written telegrams may be sent through a public telex exchange system controlled by the Postmaster-General. Post office officers may enter a subscriber's premises at all reasonable times for purposes connected with telex installations (reg. 14). A subscriber may not alter an installation in any way without the written consent of the Postmaster-General (reg. 15 (2)). An installation may not be used for sending any offensive, abusive or menacing communications or for persistently making calls without reasonable cause; such calls may be interrupted or terminated and the telex service of any subscriber whose installation is so used suspended (reg. 24).

Trade and Industry

CENSUS OF PRODUCTION (1955) (RETURNS AND EXEMPTED PERSONS) ORDER, 1954 (S.I. No. 1412): operative December 31, 1954.

For the purposes of the census of production being taken by the Board of Trade in 1955 under the Statistics of Trade Act, 1947, persons may be required to furnish returns about all the matters set out in the Schedule to the Act. Persons concerned in coal, gas, electricity, oil shale, crude or refined petroleum or shale oil undertakings, who are required by a notice served before March 31, 1955, to furnish the same information to the Minister of Fuel and Power under other provisions are exempted from furnishing returns under the Act of 1947.

For penalties for failure to make required returns or for giving false information, see section 4 of the Act of 1947.

Letters to the Editor

A Police Officer's Notes

Sir,

Mr. Kenneth Cooke has drawn attention to an important matter in his article on the Home Office circular regarding collaboration by Police officers in making their notes of an interview.

I hope—and believe—that most solicitors acting for the defence would hesitate at the idea of calling witnesses of an interview to a meeting in order to agree together what they will say. Yet this would be less objectionable than collaboration by the Police, for it could hardly result in a "note" which the defence witnesses could produce in court.

With the greatest respect to Byrne J.'s observations in *R.* v. *Bass* I would suggest that whilst subsequent discussion between Police officers of an interview is very natural, usually inevitable, and often quite proper, it is not proper that a note should be jointly prepared and later used by each as his own note.

Collaboration in the preparation of a note between A and B will either (considering A's note for the moment only) cause A to make a different note than he would make alone or will not affect it. If his note is affected by what B says to him, the affected part would in most cases if given in full be obvious hearsay.

In any case should not a note to be admissible be made at the time or as soon after as reasonably possible? Is not the occurrence of discussion with a brother officer clearly such a postponement of the making of a note as would—and should—render it inadmissible?

Yours faithfully,
O. G. Rossetti,
Solicitor

Kingsbridge, South Devon.

Committal for trial from the Court of the Coroner

Sir,

In his letter comparing the procedures in coroners' and magistrates' courts, Mr. Joseph Yahuda, under the sixth head of his argument, states that magistrates inform the accused of his right to give evidence or make a statement after they have decided that a prima facie case has been made out. He concludes that the choice of the accused does not influence that decision. May I point out that section 7 (1) of the Magistrates' Courts Act, 1952, prescribes the procedure, and the relevant passage reads ". . . if a magistrates' court inquiring into an offence as examining justices is of opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused upon trial by jury. . . ."

Even if it can be argued that by the reference to evidence only the evidence for the prosecution is intended, there is no ambiguity in the words requiring the statement of the accused to be considered—whatever view we may take as to whether an unsworn statement is ever sufficient to rebut sworn evidence.

Yours faithfully,
G. S. CHAMBERS,
Assistant Clerk to Justices.

Colchester, Essex.

[Mr. Yahuda writes: "My critic seems to be under a misapprehension; in fact, the accused is entitled to a second bite at the cherry. First, the court decides whether the prosecution has made out a prima facie case for him to answer. Then, if he chooses to answer either from the witness-box or from the dock, 'and the court is of opinion, etc.'"]

Books and Periodicals

Reviews:

Harris's Criminal Law. Nineteenth edition. By H. A. Palmer, M.A., and Henry Palmer, M.A. London: Sweet & Maxwell, Ltd. 1954. xlviii and 683 and (index) 24 pp. (32s. 6d. net.)

It is more than seventy-five years since Harris's *Criminal Law* first appeared, and now we welcome the nineteenth edition. This is the work of two new editors, H. A. Palmer and Henry Palmer, who have well maintained the exceptional standard set hitherto by the authors. A review of the chapters on Procedure has already appeared in this journal, since earlier this year Wilshere's *Criminal Procedure* was published separately in advance of the complete work; and it is not proposed to cover this ground again. But it will be at once appreciated that most of the changes and developments of the criminal law in the past few years have been in the field of procedure, and we cannot look for any startling changes in the chapters on the substantive law, where there has been no such upheaval as, for example, the Magistrates' Courts Act of 1952. No doubt this Act was primarily responsible for the prompt appearance of the new edition, but nevertheless the learned editors have used the occasion well in other respects. They have brought the whole work up to date and in some ways improved its presentation. The effect of many reported cases and statutes new since 1950 is properly considered, and nothing of importance seems to have been omitted. We notice especially the case of *R.* v. *Newland* (better known, perhaps, as the pottery case) with its far-reaching consequences on the law of public mischief and conspiracy. The result here is that we find a completely new approach to public mischief, the doctrine of which is now simpler and, at any rate until some higher court intervenes, less flexible than heretofore.

Most of the changes, however, are slight, and concern the presentation of the work rather than its substance. Many matters of little practical significance nowadays are relegated to the footnotes. The arrangement of the work is certainly improved with the chapters now numbered straight throughout, though perhaps it is a pity that the numbers of the Procedure chapters do not correspond with the numbers of the identical chapters in the separate publication. And it is difficult to understand why offences punishable on summary conviction should be included at all in the Procedure half of the book, away from their proper home with the remainder of the chapters on the substantive law. But this has always been so, and it must be admitted generally that where there are alterations they make for improvement.

The wrapper tells us of the undoubted popularity of Harris's *Criminal Law* with students and the police. The practitioner too must often have cause to be grateful to the book. It has not the detail of Archbold or Stone and can in no way replace these comprehensive works, but perhaps it would be difficult to find the fundamental principles of the criminal law set forth anywhere else with more clarity and simplicity. Nowhere else certainly can one more easily find one's way about, and the footnotes are invaluable for reference purposes. In short this is a worthy introduction and companion to both Archbold and Stone.

KENNETH RICHARDSON.

Who Are the Guilty? By David Abrahamsen, M.D. London: Victor Gollancz, Ltd. 1954. xi and 309 and (appendix) 3 and (bibliography) 16 and (index) 10 pp. (13s. 6d. net.)

This book is written by an American for an American public and was published in the United States in 1952. In the foreword the author states that it was written for the "student, parent and schoolteacher, for the psychiatrist, educator and lawyer as well as for persons working in the field of emotional adjustment, in delinquency and allied sciences." Dr. Abrahamsen is a psychiatrist, apparently with psychoanalytic training. He is clearly a most intelligent man who has taken considerable trouble to understand and to assist anti-social individuals. His sincerity is apparent throughout the book. His purpose is to explain, in simple language, the method used by the psychiatrist, psychoanalytically orientated, in dealing with the delinquent. But the author does not stop there; he is concerned with the attitude of the public to the criminal and attempts to persuade his readers into a more understanding frame of mind. That this should be done is certainly praiseworthy; but in England today it won't do to write for a specialised group of persons such as the lawyers and not have more than a cursory knowledge of the law. No criminal lawyer would subscribe to the statement that "once a crime has been committed. it has been committed for all time and nothing can make up for it." Steps can be taken to prevent or deter the same person committing the crime again. It is not retribution but prevention that motivates the lawyer, though, as a layman, he certainly may be moved by the *lex talionis* in the case of sexual crimes and murders. What would interest the lawyer as such is a book dealing with the function of the law in society and some suggested method of co-ordinating this with the current psychological knowledge. It is not good enough to disregard the basic functions of the criminal law, however open to criticism specific aspects of it may be.

As an introduction to an understanding of the delinquent and of the treatment undertaken by a psychiatrist with psychoanalytic orientation this book is most painstaking and clear. In this respect the only criticism that might be made is that Dr. Abrahamsen, in order to simplify his explanations of a very complicated subject, has frequently overcompressed his material. For example, many readers might be led to conclude that it is a matter of hours or days, not weeks, months or years, that are required to get deep down into an antisocial person's unconscious. As a research such an investigation is undoubtedly rewarding; but, socially speaking, this would seem to be the problem: can society afford so great an expense and labour in salving a delinquent unless the offender happens to be exceptionally intelligent? This question is given particular point if it is accepted, as the author himself states, that a large proportion of the law abiding public is sick.

T. E. JAMES.

Trial of John Thomas Straffen. Notable British Trials Series, Vol. 80. Edited by L. Fairfield, C.B.E., M.D., and E. P. Fullbrook. London: William Hodge & Co., Ltd. 1954. xiii and 263 and (appendices) 36 pp. (no index). (15s. net.)

In the summer of 1951 great public interest was aroused by the murder of three little girls. First, on July 10, a little girl called Christine Butcher was murdered at Windsor, then on July 16th five-year-old Brenda Goddard at Bath, and finally on August 8th Cicely Batstone, aged nine, also at Bath. John Thomas Straffen was charged with the murder of Cicely Batstone at Taunton Assizes on October 17th, 1951, before Mr. Justice Oliver and was found unfit to plead and was committed to Broadmoor "until His Majesty's pleasure be known."

Nothing, perhaps. excites so much pity as the murder of a little child, but when that is combined with a pitifully inadequate motive—"I did it to spite the police," said Straffen—public compassion reaches a high level. Thus the newspapers gave full details of the terrible murders and the public were glad to know that the criminal had been brought to justice and sent to a place of safety for his own protection and for theirs. Had the matter rested there, the name of Straffen would never have come to such dreadful eminence in the history of crime. But, on April 29, 1952, Straffen escaped from Broadmoor and during his four hours of liberty murdered another little girl, this time five-year-old Linda Bowyer.

Straffen's trial at Winchester Assizes on July 22, 1952, for the murder of Linda Bowyer is the trial dealt with in the volume under review. For the lawyer its chief interest lies in the closely reasoned arguments (here set out in full) relating to the admissibility in evidence of two previous murders, those of Brenda Goddard and Cicely Batstone. Mr. Justice Cassels ruled that this evidence was admissible on the ground that it went to the issue of identity and his decision was upheld in the Court of Criminal Appeal. For the layman this trial provides another excellent example of the course of a criminal trial, the closely reasoned legal argument, the art of examination and cross-examination by experienced counsel, the dignity and solemnity of a murder trial carried on according to the rules of English law.

However, this book contains much more than a mere account of the trial. It contains an excellent introduction in which the editors deal with many of the problems surrounding this remarkable case. Why, for example, were these apparently senseless murders committed? How was it that a known mental defective with criminal tendencies was allowed to go about unhindered? How did he manage to escape from Broadmoor, when such an escape should have been virtually impossible? How is it possible that a man found unfit to plead at one trial could be sane enough to be sentenced to death at another trial only nine months later? These are some of the questions asked and answered. It is perhaps a pity that there is no account of the medical evidence given at the first trial when Straffen was found unfit to plead, so that the reader might have the opportunity of comparing that with evidence given at the second trial, but it may be that no transcript of that evidence was available to the editors.

HENRY PALMER.

Books Received:

Nine Troubled Years. By Viscount Templewood, D.C.L., LL.D., LITT.D. London: Collins. 1954. 436 and (index) 12 pp. (25s. net.)

The Indeterminate Sentence. United Nations Publication, New York. London: H.M.S.O. 1954. v and 83 and (bibliography) 9 pp. (5s. net.)

European Seminar on Probation. United Nations Publication, New York. London: H.M.S.O. 1954. vi and 237 pp. (11s. net.)

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  Dealing in game, p. 232.

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  The Magistrates' Courts Act, 1952, p. 650.
  Obscene publications, pp. 664, 680, 694.
  Fine on a child, p. 679.
  Pedestrian crossings offences—the question of disqualification, p. 693

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  Agents provocateurs, p. 740.
  The attendance centre, p. 756.
  Larceny, p. 792.

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  What may a police officer say about a prisoner? October 15, 1954, p. 3; November 5, 1954, p. 9.

Glossary

[Guide to pronunciation. Pronounce each syllable slowly as an ordinary English word, accenting the part in italics. Then repeat the whole phrase quickly but keep each sound distinct. Where at the end of a syllable the letter " r " appears in brackets (r) do not roll it. The letter " a " by itself is long, as in bay.]

A fortiori—so much the more so, with greater reason [a for-she-*or*-eye].
Ab initio—from the beginning [ab in-*ish*-ee-oh].
Actus non facit reum, nisi mens sit rea—the act itself does not constitute guilt unless done with a guilty intent (Osborn—*The Concise Law Dictionary*) [*act*-us non *fass*-it *ree*-um, nigh-sigh men's sit rea(r)].
Actus reus—guilty act [*act*-us *ree*-us].
Aliunde—from elsewhere, from another person, place or quarter [a-lie-*unn*-dee].
Amicus curiae—literally, " a friend of the court." One who calls the attention of the court to some point of law or fact which might otherwise be overlooked. This term is frequently applied to counsel who undertake to assist the court in a matter in which they are not engaged professionally (Pullan and Alcock—*The Commercial Dictionary*) [am-*eye*-cuss *cure*-ee-eye].
Ante—before [*an*-tee].

Bona fide—in good faith [*bone*-e(r) *fie*-dee].

Censor morum—judge of morals [*sense*-or *more*-um].
Certiorari—an order which issues from the High Court of Justice removing causes from inferior courts of record to the High Court for trial or re-trial [sir-she-or-*rare*-eye].
Contra—against [*con*-tra(r)].
Contra pacem—against the peace [*con*-tra(r) *pass*-em].
Custos morum—guardians of morals [*cuss*-toss *more*-um].

Dictum, dicta—a saying, sayings [*dick*-tum, *dick*-te(r)]. For *obiter dicta*, see below.
Doli incapax—incapable of crime [*dole*-eye *in*-cap-axe].

Ejusdem generis—of the same kind or nature. A rule of construction applicable where particular words are followed by general words; the general words are limited by the particular words (Pullan and Alcock—*The Commercial Dictionary*) [*ee*-juss-dem *gen*-er-iss].
Et seq. (*et sequentes*)—and the following [et seck].
Eundo, morando et redeundo—in going, remaining and returning (Wharton's *Law Lexicon*) [ee-*unn*-doe, more-*an*-doe, et red-ee-*unn*-doe].
Ex hypothesi—following from this assumption [ex high-*poth*-ess-eye].
Ex parte—on behalf of [ex *par*-tee].
Expressio unius, exclusio alterius—the express mention of one thing is the exclusion of another [ex-*press*-ee-oh you-*nigh*-us, ex-*clue*-see-oh alter-*eye*-us].
Ex turpi causa non oritur actio—an action does not arise from a base cause (Osborn—*The Concise Law Dictionary*) [ex *turp*-eye caw-ze(r) non *or*-it-err *act*-ee-oh].

Falsa demonstratio—an abbreviation of the principle " *falsa demonstratio non nocet,*" *i.e.*, a false description does not vitiate a document. Thus if part of a description is true and part false, if the true part describes the subject with sufficient certainty, the untrue part will be rejected or ignored (Osborn—*The Concise Law Dictionary*) [*fall*-si(r) dem-on-*stray*-she-oh].
Flagrante delicto—in the commission of the offence (Osborn—*The Concise Law Dictionary*) [flay-*gran*-tea dee-*lick*-toe].
Functi (*functus officio*)—a person whose duty has been discharged and whose office or authority is therefore at an end [*funk*-tie (*funk*-tuss off-*fish*-ee-oh)].

Habeas corpus—literally, " thou shalt have the body." A prerogative writ to a person detaining another in custody commanding him to produce that person before the court [*hay*-be-ass *core*-pus].

Ibid. (*ibidem*)—in the same place, in the same book, chapter, passage, etc. [*ib*-id].
Ignorantia juris non excusat—ignorance of the law does not excuse (Osborn—*The Concise Law Dictionary*) [ig-nor-*an*-she(r) jure-iss non excuse-at].

In camera—in court, the public being excluded, or in the judge's private room [in *cam*era].
In extremis—in the last agonies, at the very point of death (*Oxford Dictionary*) [in ex-*tree*-miss].
In mitiori sensu—the less unfavourable sense [in mishy-*or*-eye *sen*-sue].
In pari materia—in an analogous case (Osborn—*The Concise Law Dictionary*) [in *pair*-eye mat-*ear*-ea(r)].
Infra—below [*in*-fre(r)].
Inter alia—among other things—[*inter* *a*-lee-ah].
Inter partes—between parties [*inter* *par*-tees].
Ipso facto—by the very fact [*ip*-so *fact*-oh].

Lex talionis—the primitive law embodied in the phrase " an eye for an eye, a tooth for a tooth " (Osborn—*The Concise Law Dictionary*) [lex *tally*-own-iss].
Libellus—libel [*lie*-bell-us].
Loc. cit (*loco citato*)—in the passage already quoted (*Concise Oxford Dictionary*) [lock sit].

Mandamus—literally " we command." An order which issues from the High Court of Justice to compel the performance of a public duty [man-*day*-muss].
Mens rea—guilty mind [men's rea(r)].
Modus operandi—the way in which anything is done, mode or manner of operation [*mode*-us op-er-*and*-eye].
Mutatis mutandis—the necessary changes being made (Osborn—*The Concise Law Dictionary*) [mew-*tate*-iss mew-*tan*-diss].

Nexus—connection [*necks*-us].
Non constat—it does not appear; it is not proved (that the asserted or implied conclusion follows from the premises) (Wharton's *Law Lexicon*) [non *con*-stat].
Nullum crimen—an abbreviation of the principle " *nullum crimen sine lege*," *i.e.*, there must be no crime except in accordance with fixed, predetermined law [*null*-um *cry*-men].

Obiter dictum, *obiter dicta*—a mere saying by the way, a chance remark, which is not binding upon future courts, though it may be respected according to the reputation of the judge, the eminence of the court and the circumstances in which it came to be pronounced (see Glanville Williams—*Learning the Law*, p. 73) [*oh*-bitter *dick*-tum, *oh*-bitter *dick*-te(r)].
Op. cit. (*opere citato*)—in the work just referred to [op sit].

Particeps criminis, *participes criminis*—a person or persons taking part in a crime [*par*-tiss-epps *crim*-in-is, par-*tiss*-ip-ease *crim*-in-iss].
Per—by [per].
Per minas—by menaces (Osborn—*The Concise Law Dictionary*) [per *mine*-ass].
Per se—by or in itself (*The Concise Oxford Dictionary*) [per see].
Post—after [post].
Prima facie—at first sight, on the face of it [*pry*-me(r) *fay*-she].

Qui facit per alium facit per se—he who acts through another is deemed to act in person (Osborn—*The Concise Law Dictionary*) [kw-eye *fass*-it per *a*-lee-um, *fass*-it per see].

Ratio decidendi—the reason or ground of a judicial decision (Osborn—*The Concise Law Dictionary*) [*ray*-she-oh *dee*-sid-end-eye].
Res integra—a point, governed neither by any decision nor by any rule of law, which must be decided upon principle (Osborn—*The Concise Law Dictionary*) [reese *in*-teg-re(r)].

Sed quaere—but is it true? [sed query].
Sic—so, thus [sick].
Simpliciter—absolutely, without qualification (Pullan and Alcock—*The Commercial Dictionary*) [sim-*pliss*-it-er].
Sine die—without naming a day, indefinitely [*sigh*-knee *die*-ee].
Stare decisis—to abide by authorities or cases already adjudicated upon (Wharton's *Law Lexicon*) [*stare*-ee de-*syce*-iss].
Sub judice—under judicial consideration [sub *jew*-diss-ee].
Sub modo—under condition or restriction (Osborn—*The Concise Law Dictionary*) [sub *mo*-doe].
Super visum corporis—after viewing the dead body [*sue*-per *vie*-sum *core*-pore-iss].
Supra—above [*sue*-pre(r)].

Vi et armis—with force and arms (Osborn—*The Concise Law Dictionary*) [vie et *arm*-iss].
Viva voce—orally [*vie*-ve(r) *vo*-see].
Viz. (*videlicet*)—that is to say, in other words, namely [viz].

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